

WORLD TRADE ORGANIZATION

WT/DS160/15
3 August 2001

(01-3866)

Original: English

UNITED STATES – SECTION 110(5) OF THE US COPYRIGHT ACT

Recourse to Article 25 of the DSU

The following communication, dated 23 July 2001, from the Permanent Mission of the United States and the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 25.2 of the DSU.

The United States and the European Communities (EC), having mutually agreed pursuant to Article 25.2 of the Understanding on Rules and Procedures for the Settlement of Disputes (DSU) to enter into arbitration to determine the level of nullification or impairment of benefits to the EC as a result of Section 110(5)(B) of the US Copyright Act, respectfully request that you contact the original panelists in the dispute "United States – Section 110(5) of the US Copyright Act" (WT/DS160), to determine their availability to serve as arbitrators in this proceeding. The parties also request you to ask the Director-General to assist the parties in selecting alternative panelists if the original panelists are unavailable and to provide Secretariat support for this proceeding.

The parties agree that the award of the arbitrator shall be final, and they shall accept it as the level of nullification or impairment for purposes of any future proceedings under Article 22 of the DSU related to this dispute.

Accompanying this letter is an annex containing agreed procedures for the Article 25 proceeding. Please circulate this letter and its annex to the Dispute Settlement Body in advance of the commencement of the arbitration in accordance with Article 25.2.

(s) Carlo Trojan
Ambassador
For the European Communities

(s) Linnet F. Deily
Ambassador
For the United States of America

Annex

Agreed Procedures and Timetable for Article 25 Arbitration

1. The arbitration shall be carried out by the original panel. Should any of the members of the original panel not be available for the arbitration, and the parties to the arbitration do not agree on a replacement, the parties shall request the Director-General of the WTO to appoint a replacement within one week of the request.
 2. The legal principles developed in former arbitration proceedings under Article 22 of the DSU, such as the allocation of the burden of proof between the parties, shall apply to this arbitration.
 3. The arbitration proceedings shall consist of the following steps, in this order: communication by the EC concerning the claimed level of nullification or impairment together with the methodology of calculation of such level; written first submissions and rebuttal submissions submitted simultaneously by both parties; meeting with the parties.
 4. The arbitration shall not include third parties.
 5. The proceedings shall aim to be completed no later than 25 September 2001.
 6. The arbitrators shall develop a schedule and any additional working procedures as necessary, in consultation with the parties.
 7. This arbitration shall terminate if the US request for an extension of the reasonable period of time (WT/DS160/14) is not granted at the DSB meeting beginning on 24 July 2001.
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