WORLD TRADE

ORGANIZATION

Original: English

CANADA - TERM OF PATENT PROTECTION

Request for Consultations by the United States

The following communication, dated 6 May 1999, from the Permanent Mission of the United States to the Permanent Mission of Canada and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request 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 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) regarding the grant of patent term in Canada.

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 existing as of the date of the application of the Agreement to that Member. In light of Canada's status as a developed country, the TRIPS Agreement applied to it on 1 January 1996.

Under the Canadian Patent Act, 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 appears to be inconsistent with Canada's obligations under the TRIPS Agreement, including but not necessarily limited to Articles 33, 65 and 70 of the TRIPS Agreement.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations. In accordance with Article 4.4 of the DSU, this request for consultations will be notified to the Dispute Settlement Body and the Council for Trade-Related Aspects of Intellectual Property Rights.

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