

CANADA – TERM OF PATENT PROTECTION

Notification of an Appeal by Canada under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 19 June 2000, sent by Canada to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to paragraph 4 of Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU") and Rule 20 of the *Working Procedures for Appellate Review*, the Government of Canada hereby notifies its decision to appeal certain issues of law covered in the Panel Report on *Canada – Term of Patent Protection* (WT/DS170/R) and certain legal interpretations developed by the Panel.

The Government of Canada submits that the Panel committed errors in law and erred in its interpretation and application of Articles 33 and 70 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights*. Canada seeks review by the Appellate Body of the Panel's findings:

- (a) that the term of protection under section 45 of Canada's *Patent Act* is inconsistent with the minimum standards of TRIPS Article 33 (paragraph 6.100 of the Panel Report);
- (b) that neither the discretionary nature of a patent examiner's authority to grant informal delays nor the formal statutory provisions prescribing time limits within which patent applicants were permitted to prosecute their applications, both of which allowed them to obtain a term of protection that does not end before 20 years from the date of filing, make available, as a matter of right, to patent applicants a term of protection required by Article 33 (paragraph 6.109); and
- (c) that the rule against retroactive application of TRIPS Article 70.1 concerning "acts which occurred before the date of application of the Agreement", does not override the rule of TRIPS Article 70.2 (paragraph 6.56 of the Panel Report).

The Government of Canada respectfully requests the Appellate Body to reverse the findings and conclusions of the Panel and to modify accordingly the recommendations of the Panel.
