

INDIA - PATENT PROTECTION FOR PHARMACEUTICAL
AND AGRICULTURAL CHEMICAL PRODUCTS

Request for the Establishment of a Panel by the EC

The following communication, dated 9 September 1997, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body is circulated at the request of that delegation.

My authorities have asked me to submit the following request on behalf of the European Communities and their Member States for consideration at the next meeting of the Dispute Settlement Body.

The Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C to the Agreement Establishing the World Trade Organization (hereafter the "TRIPS Agreement") obliges all Members of the World Trade Organization (hereafter the "WTO") to grant patents for the subject matter specified in Article 27 of the TRIPS Agreement. Article 70.8 of the TRIPS Agreement provides that where a Member makes use of the transitional provisions contained in the TRIPS Agreement and does not make patent protection available for pharmaceutical and agricultural chemical inventions as of the date of entry into force of the WTO Agreement for it, that Member must implement measures to permit parties to file patent applications concerning such inventions on or after that date (hereafter referred to as the "interim filing procedure"). When product patent protection is established, these applications must be examined according to the criteria for patentability set forth in the Agreement, based on the earliest effective filing date claimed for the application. Patents granted on the basis of such applications must enjoy the term and rights provided for under the TRIPS Agreement. Article 70.9 of the TRIPS Agreement further requires that Members subject to the obligations under Article 70.8 of the TRIPS Agreement provide exclusive marketing rights to those parties that have filed an application under the interim filing procedure, insofar as the product covered by the invention has been granted marketing approval in the Member providing protection and another Member, and a patent has been granted on the invention in another Member.

The legal regime currently in force in India does not make patent protection available for inventions concerning pharmaceutical and agricultural chemical products as provided in Article 27 of the TRIPS Agreement, nor does it provide rules that conform to obligations of the TRIPS Agreement regarding the acceptance of applications and the grant of exclusive marketing rights. As a consequence, India's legal regime appears to be inconsistent with its obligations under the TRIPS agreement, including but not limited to Articles 27, 65 and 70 of the TRIPS Agreement.

In a communication dated 28 April 1997 (WT/DS79/1), the European Communities and their Member States requested consultations with India pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereafter the "DSU") contained in Annex 2 of the WTO Agreement and Article 64 of the TRIPS Agreement in conjunction with Article XXII of the General Agreement on Tariffs and Trade 1994. Consultations were held on 14 May 1997, but did not result in a satisfactory solution of the dispute.

Accordingly, the European Communities and their Member States request the establishment of a panel to examine the matter in the light of the relevant provisions of the TRIPS Agreement and to find that India fails to conform to the obligations contained in Article 27, 65 and 70 of the TRIPS Agreement and thereby nullifies or impairs benefits accruing directly or indirectly to the European Communities and their Member States under the TRIPS Agreement.

The European Communities and their Member States ask that this request be placed on the agenda of the meeting of the Dispute Settlement Body scheduled to be held on 25 September 1997, and that the panel be established with standard terms of reference as provided for in Article 7 of the DSU.