

**INDIA – PATENT PROTECTION FOR PHARMACEUTICAL AND
AGRICULTURAL CHEMICAL PRODUCTS**

Recourse to Article 21.5 of the DSU

The following communication, dated 14 January 1999, from the Permanent Mission of the United States to the Permanent Mission of India and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 21.5 and 4 of the DSU.

My authorities have instructed me to request consultations with the Government of India regarding the *Patents (Amendment) Ordinance, 1999*, promulgated to implement the rulings and recommendations of the Dispute Settlement Body in the case of "India - Patent Protection for Pharmaceutical and Agricultural Chemical Products", DS/50. The United States is concerned that the Ordinance establishes a system of exclusive marketing rights that fails to meet the standards of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"). As a result, India's legal regime remains inconsistent with India's obligations under the TRIPS Agreement, including Article 70. The United States seeks to discuss our concerns regarding the Ordinance with Indian officials at their earliest convenience, and with a view to referring the matter to the original panel under Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") if a mutually satisfactory solution is not found.

It is the view of my government that Article 21.5 of the DSU does not require the United States to enter into formal consultations with India prior to requesting that these measures be reviewed thereunder. Without prejudice to this position, in the event that such consultations are required, India should consider that this request is being made pursuant to Article 4 of the DSU.

I look forward to receiving your reply to this request and to fixing a mutually convenient date for consultations.
