

UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT OF 1998

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

The following notification, dated 4 October 2001, sent by the Permanent Delegation of the European Commission 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 European Communities and their Member States hereby notify their decision to appeal to the Appellate Body certain issues of law and legal interpretations developed by the Panel Report on *United States – Section 211 Omnibus Appropriations Act of 1998* (WT/DS176/R).

The European Communities and their Member States request that the Appellate Body review a number of errors of law and certain legal interpretations developed by the Panel in its Report. The errors of law and legal interpretation to be reviewed include the following findings and conclusions of the Panel, namely:

1. where it found that trade names are not a category of intellectual property covered by the TRIPS Agreement (paragraph 8.41 of its Report) and, by way of consequence,
 - where it limited by implication its finding of inconsistency of Section 211(a)(2) with Article 42 of the TRIPS Agreement to trademarks (paragraphs 8.41 in conjunction with 102 and 9.1(d) of its Report);
 - where it found that Section 211(a)(2) is not inconsistent with Article 2.1 of the TRIPS Agreement in conjunction with Article 8 of the Paris Convention (1967) (paragraphs 8.41, 8.122 and 9.1(f) of the Report);
 - where it found that Section 211(b) is not inconsistent with Article 2.1 of the TRIPS Agreement in conjunction with Article 8 of the Paris Convention (1967) (paragraphs 8.41, 8.165 and 9.1(l) of its Report);
2. where it found that Section 211(a)(1) is not inconsistent with Article 15.1 of the TRIPS Agreement (paragraphs 8.70 and 9.1(a) of its Report);
3. where it found that Section 211(a)(1) is not inconsistent with Article 2.1 of the TRIPS Agreement in conjunction with Article 6 *quinquies* A(1) of the Paris Convention (1967) (paragraphs 8.89 and 9.1(b) of its Report);

4. where it found that the EC has not proved that Section 211(a)(2) is inconsistent with Article 16.1 of the TRIPS Agreement (paragraphs 8.112 and 9.1(c) of its Report);
 5. where it found both in relation to trademarks and trade names that Section 211(a)(2) is not inconsistent with Article 3.1 of the TRIPS Agreement and Article 2.1 of the TRIPS Agreement in conjunction with Article 2(1) of the Paris Convention (1967), (paragraphs 8.41, 8.140 and 9.1(g) of its Report);
 6. where it found both in relation to trademarks and trade names that Section 211(a)(2) is not inconsistent with Article 4 of the TRIPS Agreement (paragraphs 8.41, 8.148 and 9.1(h) of its Report);
 7. where it found that it has not been proved that Section 211(b) is inconsistent with Article 16.1 of the TRIPS Agreement (paragraphs 8.159 and 9.1(i) of its Report);
 8. where it found that it has not been proved that Section 211(b) is inconsistent with Article 42 of the TRIPS Agreement, both in relation to trademarks and trade names (paragraphs 8.41, 8.162 and 9.1(j) of its Report);
 9. where it found both for trademarks and trade names that Section 211(b) is not inconsistent with Article 3.1 of the TRIPS Agreement and Article 2.1 of the TRIPS Agreement in conjunction with Article 2(1) of the Paris Convention (1967) (paragraphs 8.41, 8.173 and 9.1(m) of its Report); and
 10. where it found both for trademarks and trade names that Section 211(b) is not inconsistent with Article 4 of the TRIPS Agreement (paragraphs 8.41, 8.176 and 9.1(n) of its Report).
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