

**BRAZIL – MEASURES AFFECTING PATENT PROTECTION**

Request for the Establishment of a Panel by the United States

The following communication, dated 8 January 2001, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) prohibits discrimination regarding the availability of patents and the enjoyment of patent rights on the basis of whether products are imported or locally produced. This obligation prohibits Members of the World Trade Organization (WTO) from requiring "local working," i.e., local production, of the patented invention as a condition for enjoying exclusive patent rights.

Article 68 of Brazil's 1996 industrial property law (Law No. 9,279 of 14 May 1996; effective May 1997), however, imposes a "local working" requirement which stipulates that a patent shall be subject to compulsory licensing if the subject matter of the patent is not "worked" in the territory of Brazil. Specifically, a compulsory license shall be granted on a patent if the patented product is not manufactured in Brazil or if the patented process is not used in Brazil. In addition, if a patent owner chooses to exploit the patent through importation rather than "local working," then Article 68 will allow others to import either the patented product or the product obtained from the patented process.

Article 68 of Brazil's 1996 industrial property law discriminates against US owners of Brazilian patents whose products are imported into, but not locally produced in, Brazil. Article 68 also curtails the exclusive rights conferred on these owners by their patents. As such, Brazil's local working requirement appears inconsistent with its obligations under Article 27.1 and Article 28.1 of the TRIPS Agreement.

On 30 May 2000, the United States requested consultations with the Government of Brazil pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 64 of the TRIPS Agreement (to the extent that it incorporates by reference Article XXII of the General Agreement on Tariffs and Trade 1994) regarding the above measure (WT/DS199/1). The United States and Brazil then held consultations in Geneva on 29 June 2000 and on 1 December 2000 but failed to reach a mutually satisfactory resolution of the dispute. Accordingly, the United States respectfully requests that a panel be established pursuant to Article 6 of the DSU and Article 64 of the TRIPS Agreement.

The United States further requests that this request for a panel be placed on the agenda for the next meeting of the Dispute Settlement Body, scheduled to be held on 19 January 2001, and that the panel be established with standard terms of reference as set out in Article 7 of the DSU.

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