

Dispute Settlement Reports, 1996

1995. Several U.S. companies have complained that they stand to lose significant revenues if the longer TRIPs patent term is not applied to their existing patents. The United States will initiate formal consultations under WTO dispute settlement procedures today in Geneva. We have very recently received new information from the Government of Portugal that it may have modified its interpretation of the underlying TRIPs obligation. Dispute settlement proceedings will progress until we reach a satisfactory resolution of this matter.

Pakistan -- Pakistan does not currently provide product patent protection for pharmaceutical or agricultural chemical products. Article 70(8) of TRIPs requires countries that do not provide patent protection for such products as of January 1, 1995, to establish a so-called "mailbox" mechanism in which persons may file patent applications for these products, where they will be preserved until patent protection is provided. Accordingly, the United States will initiate formal consultations under the WTO today in Geneva.

Under this TRIPs provision, all applications filed in a country's mailbox must be processed when full product patent protection is ultimately granted without regard to the time that has passed since they were filed in the mailbox. This ensures that applications filed after January 1, 1995, will be eligible for some term of protection if they otherwise satisfy the conditions of patentability, even if the developing country is taking advantage of the transition period permitted by the Agreement. TRIPs Article 70(9) additionally requires that products subject to mailbox applications be granted exclusive marketing rights for up to five years during the transition period if a patent and marketing approval is granted on the product in another WTO country and marketing approval is granted in the country providing marketing exclusivity.

India -- India fails to provide patent protection for pharmaceutical or agricultural chemical products. It also has not legislatively established mailbox and marketing exclusivity systems in accordance with Article 70(8) and 70(9) of the TRIPs Agreement. Therefore, the United States will initiate formal consultations under WTO dispute settlement procedures in Geneva in the near future.

Turkey -- Turkey maintains a discriminatory "municipality" tax on box office revenues from the showing of foreign films, but not on box office revenues from the showing of domestic films. This does not comply with Turkey's national treatment obligations under Article III of the GATT. Accordingly, formal consultations under WTO dispute settlement procedures will be invoked by the United States in Geneva in the near future.

Barshefsky stated that she will not hesitate to bring additional WTO challenges where appropriate.

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