THE TRIPS AGREEMENT AFTER SEATTLE:
IMPLEMENTATION AND DISPUTE SETTLEMENT ISSUES

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INTRODUCTION: The TRIPS Agreement: Why You Should Care

To many people, the TRIPS Agreement does not seem like a directly relevant document for the conduct of their day-to-day business. This perception is wrong for many reasons. First, almost no one in today's global business environment can afford to ignore multilateral trade rules, and intellectual property is one of the most valuable assets that a company can trade. It is also one of the hardest to protect, but there is hope. Recourse to the binding WTO dispute settlement mechanism, which can impose its decisions about the interpretation and application of the TRIPS Agreement on WTO member States, could have and in fact already has had profound impacts on the national and international intellectual property framework. The first TRIPS dispute, which dealt with so-called black-box patent applications in India, forced the Indian government to change its legislation concerning pharmaceutical and agricultural chemical inventions. Pending dispute could lead to significant changes in e.g., US copyright legislation and Canadian patent legislation. It is foreseen that soon after January 2000, when the TRIPS Agreement enters fully into force with respect to developing countries and former centralized economy countries, a very significant number of TRIPS disputes will be initiated. These disputes will likely cover all aspects of intellectual property rights and focus on enforcement of their rights. They may lead very significant changes to the legislation of many countries around the world. Changes to those laws will affect your business or your clients' business.

When doing business internationally, the TRIPS Agreement may also be directly relevant because, as of January 1, 2000, it constitutes a set of binding minimum standards that apply to all WTO members (134 currently) with the exception of UN-recognized least-developed countries. If doing business in a country that does not meet those standards, you may inform your national government, who may decide to take up the matter before the World Trade Organization Dispute Settlement Body (DSB). In addition, in cases where the national legislation of a country could be interpreted in a variety of ways, it is reasonable to assume that courts in that country would interpret national laws so as to be compatible with the international obligations of the country. Thus the text of the TRIPS Agreement may be used to influence the interpretation of a national intellectual property
legislation. Finally, in number of cases, international treaties actually form part of the national legal system. In such cases the TRIPS text would thus be on the same level as national laws.

A. IMPLEMENTATION OF THE TRIPS AGREEMENT

The deadline for implementing the obligations contained in the TRIPS Agreement was January 1, 2000 for developing countries and countries from Eastern and Central Europe. While the WTO Secretariat and the WIPO International Bureau, which have signed a cooperation agreement to jointly assist those countries in their implementation efforts, have responded to all request for assistance received from those countries, many developing countries are now facing the fact that they did not finish updating their legislative and regulatory framework in time. Some had asked for an extension or part of the TRIPS review and/or as part of the Millennium Round (see below).

The WTO Secretariat and the TRIPS Council have been following these implementation efforts very closely. Countries were allowed to ask questions of other countries. Both questions and answers received were made available to all members of the TRIPS Council and were also posted on the WTO web site (www.wto.org). As these exchanges of questions and answers (as well as public and private comments from US and European authorities) have shown, there are significant disagreements on appropriate ways to implement the TRIPS Agreement. Many of these concerns relate to part III of the TRIPS Agreement dealing with enforcement before judicial, customs and administrative authorities. Many difficulties stem from the fact that, while the law may have been changed, its application in practice may not be consistent with TRIPS standards. It is thus highly likely that a significant number of dispute settlement panels will be set up during this year to examine various aspects of TRIPS implementation, in particular with regard to the enforcement provisions in various national laws.

B. DISPUTE SETTLEMENT: GENERAL

There have been several disputes dealing with the TRIPS Agreement since its inception. In fact, TRIPS is one of the most active areas of the DSB. This is true in spite of the fact that (a) as noted above, the TRIPS Agreement did not apply until January 1, 2000 (except for certain general provisions and provisions dealing with black-box patent applications) to developing countries or countries in economic transition, and (b) the fact that until the same date, only literal violations of the Agreement could be invoked under the provisions of Article 64(2) of the Agreement.

C. DISPUTE SETTLEMENT: DECISIONS CONCERNING THE TRIPS AGREEMENT

The following DSB decisions have been rendered so far:

1) India - Patent protection for pharmaceutical and agricultural chemical products

- Timeline: Request for consultations by the United States filed July 2, 1996; panel established November 20, 1996; panel report issued September 5, 1997; notice of appeal
filed October 15, 1997; Appellate Body report and panel report as modified by the Appellate Body adopted on January 16, 1998; implementation delay: 15 months.

- **Summary**

The panel report, as modified by the Appellate Body, found that India had not complied with its obligations under Article 70.8(a) and 70.9 of the TRIPS Agreement by failing to establish a mechanism to file black-box patent applications in respect of pharmaceutical and agricultural chemical inventions. These black-box applications are filed, (thus preserving the filing date and novelty and priority of the invention) but are not examined until obligations to protect such inventions come into force. The Appellate Body also found that India had failed to comply with Article 70.9, which obliges WTO Members (using the possibility to delay patent protection for pharmaceutical and agricultural chemical products by providing for black-box applications) to provide exclusive marketing rights.

These exclusive marketing rights must be granted for the shortest of (a) a period of five (5) years after marketing approval is granted or (b) the period until the grant or rejection of the patent application, and provided that the two following conditions are met (a) as of January 1, 1995, a patent application has been filed and a patent granted in another WTO Member and (b) marketing approval has been obtained in that other country.

- **Impact**

The case illustrated the need to implement Articles 70.8 and 70.9 in the legislation of the country and not just as an administrative "practice" and provides details of the so-called "exclusive marketing rights". But the decision also highlighted the flexibility accorded countries in their implementation efforts (as recognized in the last sentence of Article 1(1)).

2) **India - Patent protection for pharmaceutical and agricultural products**

- **Timeline**: Request for consultations filed by the European Communities April 28, 1997; panel established October 16, 1997; panel report adopted by Dispute Settlement Body (DSB), September 2, 1998.

- **Summary**

This case parallels the previous one. The panel agreed with the European Communities that India had not complied with its obligations under Article 70.8(a) of the TRIPS Agreement. India had established a mere administrative practice to allow the filing of black-box patent applications for pharmaceutical and agricultural chemical inventions whereas the panel found that an adequate legal basis was required. In addition, the panel found that India has failed to establish exclusive marketing rights as provided for under Article 70.9 of the TRIPS Agreement.

3) **Indonesia - Certain measures affecting the automobile industry**
- **Timeline:** Request for consultations filed by the United States, the European Communities in Japan (October 4, 1996); panel established June 12, 1997; panel report adopted July 23, 1998; arbitration (Article 21.3 DSU) October 8, 1998; time to implement recommendations and rulings expired July 23, 1999; communication by Indonesia concerning change to policy filed July 15, 1999.

- **Summary**

This dispute did not directly concern the TRIPS Agreement, but rather Indonesia's National Car Program, which was found to violate Indonesia's national treatment obligations under the GATT 1994 and the TRIMS Agreement. However, in its claim, the United States objected to the fact that the National Car Program imposed the use of a special Indonesian trademark owned by Indonesian nationals. According to the US submission, this violated national treatment obligations as well as Article 20 of TRIPS, which states that the use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements such as use with another trademark. The panel disagreed with the United States. Use of the national trademark did not discriminate or prevent the registration of foreign trademarks. As regards use with another trademark, the panel found that this condition had to be accepted by foreign companies wishing to participate in the National Car Program and that companies thus voluntarily agreed to use the Indonesian trademark. The panel thus did not construe this obligation to use the Indonesian trademark as a prohibited requirement under Article 20 of TRIPS. Finally, the panel found that Indonesia could avail itself of the transitional period ending on January 1, 2000. Under Article 65 of TRIPS, the obligation of Indonesia during such transitional period is not to change its laws, regulations and practice to make them more inconsistent with TRIPS. No such change was demonstrated to the panel.

- **Impact**

The restrictive interpretation given to Article 20 by the panel may be of some concern to trademark owners. One of the purposes of Article 20 was to eliminate special requirements including use of a foreign trademark in combination with the trademark of a local producer. That being said, Article 20 specifically allows requirements prescribing the use of a trademark to identify the producer of goods or services in addition to the trademark distinguishing the goods or services themselves. In this case, the interpretation agreed upon by the panel is not unreasonable because the purpose of the Indonesian trademark was not linked to the use any other trademark, but rather used as a sign that a car had been produced under the National Car Program.

D. DISPUTE SETTLEMENT: SETTLED CASES

1) **Japan - Measures concerning sound recordings**

- **Timeline:** Request for consultations filed by the United States on February 14, 1996; notification of mutually agreed solution February 5, 1997.

- **Summary**
In this complaint, the first to be filed under the TRIPS Agreement, the United States argued that the enforcement mechanism in Japanese law concerning civil and criminal procedures to fight their commercial piracy of sound recordings where not consistent with articles 3 and 4 (national treatment and most favored nation treatment), 14 (related rights), 61 (criminal procedures), 65 (transitional arrangements), and 70 (protection of existing subject matter). At issue was the protection of sound recordings already in existence at the time of entry into force of the agreement. The Japanese copyright law was amended on December 26, 1996 to clearly protect passed musical performances and existing sound recordings and, based on these developments, the parties agreed to put an end to this dispute.

2) Sweden - Measures affecting the enforcement of intellectual property rights


- Summary

In this complaint, the United States argued that the unavailability of provisional measures in the context of civil proceedings involving an infringement of intellectual property rights was inconsistent with articles 50 (provisional measures), 63 (dispute prevention and settlement) and 65 (transitional arrangements). The main area of this agreement was the fact that courts did not have the authority to order provisional measures in civil proceedings involving an alleged infringement of an intellectual property right, in particular *ex parte* (*inaudita altera parte*). Sweden amended its legislation on intellectual property rights on November 25, 1998 (entry into force January 1, 1999) to grant judicial authorities the authority to order such provisional measures, including orders to search for infringing materials, documents or other relevant evidence.

3) Pakistan - Patent protection for pharmaceutical and agricultural chemical products

- Timeline: Request for consultations filed by the United States on May 6, 1996; notification of mutually agreed solution on March 7, 1997.

Summary

In this case, which resembles the case filed against India (see above), the United States argued that Pakistan had to provide a system for the filing of patent applications for pharmaceutical and agricultural chemical products under article 70.8 of the TRIPS Agreement. In addition, the United States argued that under article 70.9, Pakistan had to establish a system to grant exclusive marketing rights. To comply with these obligations, the president of Pakistan issued an ordinance on February 4, 1997 which provides that all patent applications filed after January 1, 1995 are considered validly filed. Under the regulations implementing this ordinance, any person who first files an application for patent protection for a pharmaceutical or agricultural chemical invention in an other WTO member after the date of the ordinance will be able to file an application in Pakistan. The filing date will be the date at which the application was received, although after January 1, 2000, the applicant will have the right to claim priority under article 4 of
the Paris Convention. The ordinance also provides exclusive marketing rights based on the conditions contained in article 70.9.

4) Portugal - Patent protection under the *Industrial Property Act*

- **Timeline**: Request for consultations filed by the United States on May 6, 1996; notification of mutually agreed solution on October 8, 1996.

- **Summary**

In this case, the United States argued that the term of protection for patents in Portugal was incompatible with article 33 of the TRIPS Agreement which provides for a term of twenty years counted from the filing date under 70.2 of the TRIPS Agreement, the provisions of article 33 of the TRIPS Agreement applies to all patents that were in force on January 1, 1996 and to all patents granted based on applications that were pending on that date. Portugal issued decree law 141-96 which confirmed that all patents that were in force on January 1, 1996 and all patents granted after that date based on applications that were pending on January 1, 1996 would receive a term of protection of fifteen years from the date of grant or twenty years from the effective filing date, which ever term is longer.

5) Japan - Measures concerning sound recordings

- **Timeline**: Request for consultations filed by the European communities on June 4, 1996; notification of a mutually agreed solution on November 17, 1997.

- **Summary**

This case parallels certain aspects of the Japan-USA case mentioned above. The issue here was again the protection of performances and sound recordings for a term of at least fifty years from the end of the calendar year in which the fixation was made or the performance took place and the application of such protection to sound recordings which were in existence at the time of entry into force of the TRIPS Agreement and had not yet fallen into the public domain in their country of origin or in the country where their protection was sought. The situation was corrected by the change made to the Japanese copyright law in December 1996 which entered into force in March 1997.

E. DISPUTE SETTLEMENT: PENDING CASES

1) Canada - Patent protection for pharmaceutical products

- **Timeline**: Complaint filed by the European communities on December 19, 1997; panel established on February 1, 1999; many third party interventions.

- **Summary**

In this complaint, the European Communities contends that Canada did not meet its obligations under the TRIPS Agreement by "failing to provide adequate protection of pharmaceutical inventions for the entire term of protection envisaged in the TRIPS
Agreement". The European Communities contends that Article 55.2 of the Canadian Patent Act which allows (a) use of patented invention for uses reasonably related to the development and submissions of information required by a government and (b) use to make or construct for the manufacture and storage of articles intended for sale after the expiry of the patent is a violation of Article 33.

This case will test the scope of Article 30 which allows limited exceptions to patent rights. Such exceptions must "not unreasonably conflict with a normal exploitation of the patent and not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties". This language stems from Article 9(2) of the Berne Convention and has not yet been applied in the industrial property sphere.

2) United States - Section 110(5) of the US Copyright Act

- **Timeline**: Complaint filed by the European Communities on January 26, 1999; panel established May 26, 1999; panel members appointed September 1999.

- **Summary**

In this complaint, widely known as the IMRO case, the European Communities contends that a recent amendment to the US Copyright Act, which excluded from the obligation to pay public performance royalties certain public establishments (bars, shops, restaurants) playing radio and television music is a violation of the US' obligations under Article 9(1) of the TRIPS Agreement, which requires compliance with Articles 1 to 21 of the Berne Convention (except Article 6bis). This amendment to the US Copyright Act was added as part of the 1998 Sonny Bono Term Extension Act, Public Law 105-298, which extended the basic term of copyright protection in the United States. The exemption from public performance royalties was the result of a vigorous lobbying campaign by the U.S. bar, hotel and restaurant lobby.

The Panel in the United States – Section 110(5) of the US Copyright Act [WTO doc. WT/DS160/R] considered the nature and the scope of limitations in Article 13 of the TRIPS Agreement.

Two exemptions provided for in Section 110(5) of the US Copyright Act were at issue in this dispute, namely the homestyle exemption provided for in sub-paragraph (A) of the Act and the business exemption provided in sub-paragraph (B). The business exemption allowed the amplification of music broadcasts, without an authorization and a payment of a performing right royalty by food service and drinking and retail establishments, provided that their size did not exceed a certain square footage limit. For establishments that exceeded the allowed square footage limit, the amplification of music broadcasts without an authorization and a payment of a performing right royalty was permitted provided that the establishment met certain equipment limitations. The homestyle exemption allowed small restaurants and retail outlets to amplify music broadcasts without an authorization of the right holders and without the payment of a performing right fees provided used only “homestyle” equipment, i.e. the equipment commonly used in private homes.
The EC alleged that these two exemptions were incompatible with Article 9.1 of the TRIPS Agreement together with Articles 11(1)(ii) and 11bis(1)(iii) of the Berne Convention, and that these exceptions could not be justified under any express or implied exceptions under the Berne Convention and the TRIPS Agreement. The US argued that the Section 110(5) of the US Copyright Act was consistent with its obligations under the TRIPS Agreement, because the provisions of the Berne Convention, as incorporated in the TRIPS Agreement, permit minor limitations on the exclusive right of copyright owners. The US further argued that the exceptions in the US Copyright Act fall within the standard of Article 13 of the TRIPS Agreement, which provides the standard to assess such limitations.

The report of the panel was circulated to Members on 15 June 2000 and adopted by the DSB on 27 July 2000. The Panel found that the business exemption in subparagraph B of the Section 110(5) of the US Copyright Act did not meet the requirements of Article 13 of the TRIPS Agreement and was therefore inconsistent with Articles 11bis(1)(iii) and 11(1)(ii) of the Berne Convention (1971) as incorporated into the TRIPS Agreement by Article 9.1. The homestyle exemption provided for in sub-paragraph (A) of Section 110(5) of the US Copyright Act met the requirements of Article 13 of the TRIPS Agreement and was therefore consistent with Articles 11bis(1)(iii) and 11(1)(ii) of the Berne Convention (1971) as incorporated into the TRIPS Agreement by Article 9.1 of that Agreement in large part because parties agreed that it only applied to dramatic musical works (e.g., live opera broadcasts) and not to mainstream (non-dramatic) musical works. This greatly reduced the impact of the exemption.

The Panel interpreted the provisions of the TRIPS Agreement, and in particular the wording of Article 13, and concluded that the scope of Article 13 is not limited to “the exclusive rights newly introduced under the TRIPS Agreement.”[See para. 6.80 of doc. WT/DS160/R]

The Panel first examined whether the “minor exception doctrine” existed under the Berne Convention, and concluded that the doctrine exists under the Berne Convention.[Idem, paras. 6.47-6.55] The Panel then turned to an analysis of the scope of the “minor exceptions doctrine” and concluded that “non-commercial character of the use […] is not determinative provided that the exception contained in national law is indeed minor.”[Idem, para. 6.58] Subsequently, the Panel examined the applicability of the doctrine on the TRIPS Agreement and concluded that, “in the absence of any express exclusion in Article 9.1 of the TRIPS Agreement, the incorporation of Articles 11 and 11bis of the Berne Convention (1971) into the Agreement includes the entire acquis of these provisions, including the possibility of providing minor exceptions to the respective exclusive rights.”[Idem, Para 6.63]

The Panel also considered the effect of Article 10 of the WIPO Copyright Treaty.[WIPO Copyright Treaty was adopted on 20 December 1996, and it entered into force on 20 May 2002. As of 25 July 2002, following countries are parties to the Convention: Argentina, Belarus, Bulgaria, Burkina Faso, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Ecuador, El Salvador, Gabon, Georgia, Guinea, Honduras, Hungary, Indonesia, Jamaica,
Japan, Kyrgyzstan, Latvia, Lithuania, Mali, Mexico, Mongolia, Panama, Paraguay, Peru, Philippines, Republic of Moldova, Romania, Saint Lucia, Senegal, Slovakia, Slovenia, Ukraine and United States of America.] The Panel concluded that this treaty was intended to be compatible with the framework of the Berne Convention and the TRIPS Agreement, since, in particular, the WIPO Copyright Treaty uses the same language as the other two Agreements. Thus the Panel concluded that the WIPO Copyright Treaty maintained the “minor exceptions doctrine” with respect to the Berne Convention. The Panel also noted that, in order to promote uniformity in the framework of intellectual property rights created by these three Agreements, provisions of the WIPO Copyright treaty should be taken into consideration, unless these Agreements stated otherwise, when analysing relevant provisions of the TRIPS Agreement and the Berne convention. [Idem, paras 6.69-6.70]

The Panel established that the limitations and exceptions had to meet three cumulative criteria (or “steps”), in order to be permitted under Article 13 of the TRIPS Agreement: 1) the exception shall be confined to certain special cases, 2) the exception shall not conflict with a normal exploitation of the work, and 3) the exception does not necessarily prejudice the legitimate interest of the right holder. [Idem, Para 6.97] The Panel interpreted each of the conditions separately and established the following guidance. The first condition requires that a limitation or exception is clearly defined in national legislation and narrow in scope and reach (i.e., essentially the dictionary meaning of “special”). The Panel added that an exception or limitation could be compatible with the first condition, even if “it pursues a special purpose whose underlying legitimacy in a normative sense can not be discerned.” [Idem, Para 6.112] Regarding the second condition, the Panel concluded that “an exception or limitation to an exclusive right in domestic legislation rises to the level of a conflict with a normal exploitation of the work […], if uses, that in principle are covered by that right but exempted under the exception or limitation, enter into economic competition with the ways that right holders normally extract economic value form that right to the work and thereby deprive them of significant tangible economic gains.” [Idem, Para 6.184] Both actual and potential effects should be taken into consideration when assessing exemption or limitation. [Idem, para. 6.185] In the examination of the third condition, the Panel concluded that the “prejudice to the legitimate interests of right holders reaches an unreasonable level if an exception of limitation causes or has the potential to cause an unreasonable loss of income to the copyright owner.” [Idem, Para 6.229]

The decision was not implemented in the United States as of January 1, 2003. While the European Communities obtained a favorable decision from the WTO DSB, it appears that it will be difficult for the US Executive Branch to convince the Congress to amend this new exemption from public performance royalties given the relative strength of the lobby at whose behest the exemption was adopted.

3) United States - Section 211 Omnibus Appropriations Act

- Timeline: Request for consultations filed by the European Communities on July 8, 1999.
- **Summary**

In this complaint, generally known as the Bacardi case, the European Communities alleges that Section 211 of the *US Omnibus Appropriations Act*, which became law on October 21, 1998, makes it difficult or even impossible to renew a trademark registration in the United States if such registration was previously abandoned by a trademark owner whose business was confiscated due to trade with Cuba. Article 2 of the TRIPS Agreement obliges WTO Members to comply with Articles 1 through 12 and 19 of the Paris Convention.

This dispute brings to the fore the opposition by the European communities and other countries, such as Canada, to US rules that forbid trade with Cuba and that in some cases tend to have an extraterritorial effect. A decision against the US in this highly politicized matter might lead to complex and far-reaching developments in the US Congress.

The Appellate Body examined Article 15.1, which contains a definition of what constitutes a trademark, and that the criterion for registration of trademarks is their distinctiveness, and stated that signs that are capable of constituting a trademark (“signs that are capable of distinguishing the goods and services of one undertaking from those of other undertakings”) should be eligible for registration as trademarks in national legislation. The Appellate Body concluded that Article 15.1 expressed only what qualifies for the registration of a trademark, but did not provide for automatic registration of goods and services which conform to the requirements for registration. Thus, the Appellate Body concluded, WTO Members are free to lay out, in their national legislation, conditions for the registration of a trademark that do not meet the conditions for registration specified in Article 15.1 (the definition of “protectable subject matter” and what constitutes a trademark).

The Appellate Body further concluded that “Article 15.1 of the TRIPS Agreement limits the right of Members to determine ‘conditions’ for filing and registration of trademarks under their domestic legislation pursuant to Article 6(1) [of the Paris Convention] only as it relates to the distinctiveness requirement enunciated in Article 15.1.” and that, whilst the Agreement imposes clear obligations in terms of which rights must be provided to rightsholders, it did not say who the rightsholder is (or should be). This may eventually be used to limit the rights of foreign trademark rightsholders.

With respect to Article 15.2 of the TRIPS Agreement, the Appellate Body found that grounds for denial of registration are not limited to the conditions expressly mentioned in Paris Convention and the TRIPS Agreement, but that the conditions for denial of registration need to be consistent with the provisions of both the Paris Convention and the TRIPS Agreement.

4) **Ireland - Measures affecting the grant of copyright and neighboring rights**

- **Timeline:** Request for consultations filed on May 22, 1997.
5) **Denmark - Measures affecting the enforcement of intellectual property rights**

- **Timeline:** Request for consultations filed by the United States on May 21, 1997.

- **Summary**

This dispute parallels the Sweden-USA case already mentioned in the "settled cases" section. The case has not proceeded further at this stage.

6) **Canada - Term of patent protection**

- **Timeline:** Request for consultations filed by the United States on May 10, 1999.

- **Summary**

In this complaint, the United States alleges that the *Canadian Patent Act* violates article 33 of the TRIPS Agreement because the term granted to patents issued on the basis of applications filed before October 1, 1989 is seventeen years from the date of grant. The case is proceeding, albeit slowly.

7) **Argentina - Patent protection for pharmaceuticals and test data protection for agricultural chemicals**

- **Timeline:** Request for consultations filed by the United States on May 10, 1999.

- **Summary**

The two issues in this case are the extent of exclusive marketing rights for pharmaceutical products that WTO members must grant in cases where they do not provide product patent protection. Argentina, considered a developing country, will not apply the patent provisions of the TRIPS Agreement until January 1, 2000. However, it must comply with article 70.8 of the TRIPS Agreement with regard to such exclusive marketing rights. The second issue in the standstill/rollback provision contained in article 65.5 of the agreement, which prevents any change to laws regulations and practices made during the transitional period accorded developing countries that would result in a lesser degree of consistency with the TRIPS Agreement. The United States argues that the revocation in August 1998 of protection for undisclosed test data submitted for marketing approval for agricultural chemical products violates this provision of the Agreement.

8) **European Communities - Protection of trademarks and geographical indications for agricultural products and foodstuffs**

- **Timeline:** Request for consultations filed by the United States on June 7, 1999.

- **Summary**
In this complaint, the United States alleges that the European Communities regulations 2081/92 as amended does not comply with the TRIPS Agreement by failing to provide national treatment with respect to geographical indications and by failing to provide protection to preexisting trademarks that are similar or identical to a geographical indication.

9) Greece- Enforcement of intellectual property rights for motion pictures and television programs

- **Timeline:** Request for consultations filed by the United States on May 7, 1998.

- **Summary**

This dispute concerns the situation of unauthorized broadcasting in Greece. A number of broadcasters operate in Greece without proper authorization from owners of copyright in the material they broadcast. The United States argues that there are no effective remedies to prevent this situation in Greece.

10) European Communities - Enforcement of intellectual property rights for motion pictures and television programs

- **Timeline:** request for consultations filed by the United States on May 7, 1998.

- **Summary**

This dispute parallels the case against Greece mentioned above.

11) European Communities - Measures affecting the grant of copyright and neighboring rights

- **Timeline:** request for consultations filed by the United States on January 1, 1998.

- **Summary**

This case parallels the dispute between Ireland and the United States already mentioned.

F. TRIPS REVIEW

Under Article 71(1) of TRIPS, the Council for TRIPS was asked to review the implementation of the Agreement during this year. Preparations for this review have begun. Two major issues that remained outstanding at the end of the year Uruguay Round, namely the protection of biotechnological inventions and the protection of geographical indications have been mentioned by a number WTO Member States in this connection.

More details will be provided in the next issue of this Update. Readers with an interest in biotechnology should download the recent report by the Organization for Economic Cooperation and Development (OECD) on the protection of biotechnological inventions. At the time of this writing, the report is available online at [http://www.oecd.org/ech/index_2.htm](http://www.oecd.org/ech/index_2.htm).