WORLD TRADE ORGANIZATION

WT/DS199/1
G/L/385
IP/D/23
8 June 2000
(00-2254)

Original: English

BRAZIL – MEASURES AFFECTING PATENT PROTECTION

Request for Consultations by the United States

The following communication, dated 30 May 2000, from the Permanent Mission of the United States to the Permanent Mission of Brazil and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Brazil pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 64 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (to the extent that it incorporates by reference Article XXII of GATT 1994), concerning those provisions of Brazil's 1996 industrial property law (Law No. 9,279 of 14 May 1996; effective May 1997) and other related measures, which establish a "local working" requirement for the enjoyability of exclusive patent rights that can only be satisfied by the local production – and not the importation – of the patented subject matter.

Specifically, Brazil's "local working" requirement 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. Brazil then explicitly defines "failure to be worked" as "failure to manufacture or incomplete manufacture of the product", or "failure to make full use of the patented process". The United States considers that such a requirement is inconsistent with Brazil's obligations under Articles 27 and 28 of the TRIPS Agreement, and Article III of the GATT 1994.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for these consultations.
