

Original: English

BRAZIL – MEASURES AFFECTING PATENT PROTECTION

Notification of Mutually Agreed Solution

The following communication, dated 5 July 2001, from the Permanent Mission of the United States and the Permanent Mission of Brazil to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 3.6 of the DSU.

The United States of America and Brazil wish to notify the Dispute Settlement Body that they have reached a mutually satisfactory solution to the matter raised by the Government of the United States in WT/DS199/1 (Brazil - Measures Affecting Patent Protection), dated 8 June 2000.

Please find attached the text of the exchange of letters of 19 and 25 June 2001 on this subject. We would ask you to circulate this notification and attachment to the relevant Councils and Committees, as well as to the Dispute Settlement Body.

Mr. Celso Luiz Nunes Amorim
Ambassador and Permanent Representative
Permanent Mission of Brazil

Ms Linnet F. Deily
Ambassador and Permanent Representative
Permanent Mission of the United States of
America

Letter from Mr. José Alfredo Graça Lima, Under-Secretary-General for Integration, Economic and External Trade Matters to Ambassador Peter Allgeier, Deputy USTR, dated 19 June 2001

1. I refer to the panel initiated by your Government questioning the compatibility of Article 68 of Brazil's Industrial Property Law (Law 9.279/96) with the TRIPS Agreement. In the view of Brazil, as you are aware, Article 68 is fully compatible with the TRIPS Agreement.
2. Nevertheless, in the spirit of the proposal made by Ambassador Robert Zoellick to Minister Celso Lafer in their recent meeting in Geneva for a common endeavor to find a mutually satisfactory solution for the dispute, and following up on our recent conversation about the same subject in Washington D.C., on May 24, I would like to convey to you the following proposal.
3. Should the U.S. withdraw the WTO panel against Brazil concerning the interpretation of Article 68, the Brazilian Government would agree, in the event it deems necessary to apply Article 68 to grant compulsory license on patents held by the U.S. companies, to hold prior talks on the matter with the U.S. Government. These talks would be held within the scope of the U.S. - Brazil Consultative Mechanism, in a special session scheduled to discuss the subject.
4. I look forward to receiving your response to this proposal.

Letter from Mr. Peter F. Allgeier, Executive Office of the President, Deputy United States Trade Representative to Mr. José Alfredo Graça Lima, Under-Secretary-General for Integration, Economic and External Trade Matters, Ministry of Foreign Affairs, Brazil, dated 25 June 2001

Thank you for your letter, which referred to the panel initiated by the United States regarding the consistency of Article 68 of Brazil's Industrial Property Law (Law 9.279/96) with the TRIPS Agreement.

As Ambassador Zoellick mentioned during his meeting with Minister Celso Lafer, we are interested in finding a mutually satisfactory solution to this dispute. Your letter conveyed a proposal that should lead to such a solution. I am pleased to report that my government will agree to terminate the WTO panel proceeding without prejudice concerning the interpretation of Article 68, based on your government's commitment to hold prior talks with the United States with sufficient advance notice to permit constructive discussions in the context of a special session of the US - Brazil Consultative Mechanism, should Brazil deem it necessary to apply Article 68 to grant a compulsory license on patents held by U.S. companies. While we had real concerns regarding the potential use of Article 68 of Brazil's Industrial Property Law, we note that this provision has never been used to grant a compulsory license. In addition, we would expect Brazil not to proceed with further dispute settlement action regarding sections 204 and 209 of the U.S. patent law.

As Ambassador Zoellick noted during his meeting with Minister Lafer, the United States' concerns were never directed at your government's bold and effective program to combat HIV/AIDS. Our ability to find a mutually satisfactory solution to this WTO dispute will allow our conversation regarding this scourge to turn to our shared goal of defeating the HIV/AIDS virus.

We will make the necessary arrangements to notify the WTO Secretariat of our decision as soon as possible.
