

PAKISTAN - PATENT PROTECTION FOR PHARMACEUTICAL
AND AGRICULTURAL CHEMICAL PRODUCTS

Notification of a Mutually-Agreed Solution

The following communication, dated 28 February 1997, from the Permanent Mission of the United States and the Permanent Mission of Pakistan to the Dispute Settlement Body, is circulated at the request of those delegations.

The Governments of the United States of America and Pakistan 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/DS36/1, dated 6 May 1996, concerning Pakistan's obligation under the Agreement of Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) to either grant patent protection for pharmaceutical and agricultural chemical products as of the date of entry into force of WTO Agreement, or to establish systems for filing applications for patents on such inventions and for granting exclusive marketing rights under certain circumstances.

Noting that Pakistan does not yet provide patent protection for pharmaceutical and agricultural chemical products, the Governments of the United States and Pakistan agree that Pakistan was obligated under Article 70.8 of the TRIPS Agreement to establish a system for the filing of patent applications on such inventions by 1 January 1995. The two Governments also agree that Pakistan is also obligated under Article 70.9 of the TRIPS Agreement to establish a system to grant exclusive marketing rights to such patent applicants if they meet certain criteria. To fulfil these obligations, Pakistan President Farooq Ahmad Khan Leghari issued on 4 February 1997 Ordinance No. XXVI of 1997.

With respect to the obligations in Article 70.8 of the TRIPS Agreement, the Ordinance provides that all applications filed after 1 January 1995 shall be considered validly filed. The Government of Pakistan will issue regulations implementing the Ordinance providing that any person who first files an application for patent protection for pharmaceutical or agricultural chemical product in another WTO member after the date the Ordinance was issued will be able to file an application with Pakistan's patent authorities and (1) until 1 January 2000 have as their filing date the date the application was received by such authorities, or (2) after 1 January 2000, have the right to claim priority under the rules laid down in Article 4 of the Paris Convention for the Protection of Industrial Property.

Furthermore, to ensure that persons who would have filed applications from 1 January 1995 until the date the Ordinance was issued are able to do so and receive the filing date they would have received, the regulations implementing the Ordinance will provide that:

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- any person who first filed an application for patent protection for a pharmaceutical or agricultural chemical product in another WTO Member after 1 January 1995 and before the date of the Ordinance was issued will be able to file an application under the system established by the ordinance;
- such applications will be accepted by Pakistan's patent authorities beginning on the date the ordinance was issued and for one year thereafter; and
- the effective filing date of each such application shall be the filing date of the original application filed in another WTO Member.

With respect to the obligations in Article 70.9 of the TRIPS Agreement, the ordinance provides that exclusive marketing rights will be granted where (1) the applicant is granted a patent and marketing approval on the product that is the subject of the application in another WTO Member and (2) the applicant is granted marketing approval in Pakistan. The period of exclusive marketing rights shall be for a period of five years after these conditions are met or until a product patent is granted or rejected in Pakistan, whichever term is shorter. In accordance with the requirement under Article 70.9 of the TRIPS Agreement that marketing rights be exclusive, the Government of Pakistan will implement the Ordinance so that under no circumstances will exclusive marketing rights be subject to any limitation or exception, including the imposition of a compulsory license. Accordingly, no party will be granted marketing approval for a product that is the subject of exclusive marketing rights without the express consent of the holder of such exclusive marketing rights.

As soon as possible following the date of this joint notification, the Government of Pakistan will issue regulations implementing the Ordinance in accordance with the above-stated description.

Based on these developments, Pakistan and the United States have agreed to terminate consultations on this matter and the United States wished formally to withdraw this matter from further attention under the provisions of the Dispute Settlement Understanding. This agreement is without prejudice to the rights and obligations of either Member under the Agreement Establishing the World Trade Organization.