

Enforcement Of Intellectual Property Rights And Dispute Settlement

- (a) Civil and Criminal Remedies for Infringement of Intellectual Property Rights.
- (b) Border Measures, Dispute Prevention and Dispute Settlement.

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ABSTRACT

This article examines the provisions of part III (Enforcement of Intellectual Property Rights) Articles 41-61 Part V (Dispute Prevention and Settlement) Articles 63-64 of the Agreement On Trade-Related Aspects of Intellectual Property Rights (TRIPS). This agreement besides laying down substantive requirements in regard to Intellectual Property Rights (IPRs), also prescribes in the aforesaid provisions the procedural safeguards about the enforcement of those substantive standards.

*Discussing the requirement under Article 51 of TRIPS about **Border Measures**, the article shows as to how Malaysia implements this requirement through section 39 of the Copyright Act 1987 under which Copyright (Notice of Prohibition of Import) Regulation 1987 has also been promulgated.*

Finally, the article also explains the main features of the WTO Dispute settlement System in the light of actual dispute settlements by the WTO.

It is well-known that high substantive standards of protection of intellectual property are of little use if rights cannot be effectively enforced. The establishment of such enforcement rules therefore received much attention from the TRIPS negotiators and, as a result, the TRIPS Agreement lays down, in a fair amount of detail, the domestic procedures and remedies that Members have to provide so that right holders can enforce their intellectual property rights effectively.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), as is well known, is a part of the Marrakesh Agreement which brought into existence the World Trade Organisation (WTO). Through the TRIPS Agreement, the protection of intellectual property rights has become an integral part of the multilateral trading system as enshrined in the WTO. In fact together with agreement on (1) trade in goods and (2) trade in services, it forms one of the three pillars of the WTO.

The TRIPS rules on enforcement constitute the first time in any area of international law that such rules on domestic enforcement procedures and remedies have been negotiated.¹ These rules aim to recognize basic differences between national legal systems while being sufficiently precise to provide for effective enforcement action as well as safeguards against abuse in the use of procedures. As provided in Article 1.1 of the Agreement, Member countries are free to determine the appropriate method of implementing these and other provisions of the Agreement within their own legal system and practice.

The provisions on enforcement are contained in Part III of the TRIPS Agreement, which is divided into five Sections. The first Section lays down general obligations that all enforcement procedures must meet. These are notably aimed at ensuring their effectiveness and that certain basic principles of due process are met. The following Sections deal with civil and administrative procedures and remedies, interim or what are called here as "provisional" measures, special requirements related to border measures, criminal procedures and WTO Dispute Settlement System.

These provisions have two basic objectives: one is to ensure that effective means of enforcement are available to right holders; the second is to ensure that enforcement procedures are applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

The obligations set out are of two main types. The first type are those which prescribe procedures and remedies that must be provided by each Member- much of this is set out in terms of the authority that must be available to judges and courts or other component authorities, such as customs. The second type of obligation is what might be described as "performance" requirements in relation to the working of these procedures and remedies in practices; for examples, they must be such as to permit effective action against infringing activity, (expeditious and deterrent remedies) and applied in a manner that will avoid the creation of barriers to legitimate trade.

The Agreement makes a distinction between infringing activity in general, in respect of which civil judicial procedures and remedies must be available, and counterfeiting and piracy of copyright goods - the more blatant forms of infringing activity- in respect of which criminal procedures are to be provided.²

GENERAL OBLIGATIONS

The general obligations relating to enforcement are contained in Article 41. Paragraph 1 contains what was earlier described as "performance" requirements: Enforcement procedures must be such as to permit effective action against any act of infringement of intellectual property rights, *and the remedies available must be expeditious in order to prevent infringements and they must constitute a deterrent to further infringements*. On the other hand, these procedures must be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Section 2 of Part III of TRIPS requires that civil judicial procedures must be available in respect of any activity infringing intellectual property rights covered by the Agreement. The provisions of the Section elaborate in more detail basic features that such procedures must provide for. These provisions apply also to administrative procedures on the merits of a case, to the extent that any civil remedy can be ordered as a result of such procedures.

Article 42 contains certain principles aimed at ensuring due process. Defendants are entitled to written notice which is timely and contains sufficient details of the claims. Parties must be allowed to be represented by independent legal counsel, and procedures may not impose unduly burdensome requirements concerning mandatory personal appearances. All parties are entitled to substantiate their claims and to present all relevant evidence, while confidential information must be identified and protected.

Article 43 represents a compromise between the different existing approaches in applying the rules on evidence.³

Section 2 contains provisions on injunctions, damages and other remedies. For the right holder, it may be most important to be able to prevent further infringements. Article 44 requires that the courts be empowered to order injunctions, i.e., to order a party to desist from further infringements, including the possibility to prevent imported infringing goods from entering into domestic distribution channels. Members are not obliged to provide the courts that authority where a person has not acted in good faith. Where the infringing act constitutes government use, remedies may be limited to payment of adequate remuneration to the right holder.

Article 46 provides that the courts must be empowered to order an infringer, at least if he or she acted in bad faith, to pay the right holder adequate damages. They must also be authorized to order the infringer to pay the right holder's expenses. These expenses may include appropriate attorney's fees.

In order to create an effective deterrent to infringement, Article 46 requires that the judicial authorities must have the authority to order infringing goods to be disposed of outside the channels of commerce, or, where constitutionally possible, destroyed. Similarly, it must be possible to dispose of materials and instruments used for the production of **infringing goods**.

In respect of counterfeit trademark goods, it is clarified that the simple removal of trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.⁴

According to Article 47, judicial authorities may be authorized to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the **infringing goods** or services and of their channels of distribution. This option is aimed at assisting the right holders to find the source of infringing goods and to take appropriate action against other persons in the

distribution channels. This provision must be applied in a way that is in proportion to the seriousness of the infringement.⁵

Article 48 embodies certain safeguards against abuse of enforcement procedures. The judicial authorities must have the authority to order the applicant who has abused enforcement procedures to pay an adequate compensation, to the defendant who has been wrongfully enjoined or restrained, to cover both the injury suffered and expenses. Such expenses may include appropriate attorney's fees. Public authorities and officials are exempted from liability only where actions are taken or intended in good faith in the course of the administration of the law.

INTERIM (PROVISIONAL) MEASURES

Article 41 requires that enforcement procedures must permit effective action against infringements and they must include expeditious remedies. As judicial procedures may take a fair amount of time, it is necessary that the judicial authorities are empowered to provide provisional relief for the right holder in order to stop an alleged infringement immediately.

The provisions on provisional measures are contained in Article 50. It requires each country to ensure that its judicial authorities have the authority to order prompt and effective provisional measures. Such measures must be available in respect of any intellectual property right. These provisions apply also to administrative procedures, to the extent that any provisional measure can be ordered as a result of such procedures.

Article 50 spells out two main objectives for the use of provisional measures. One is to prevent an infringement from occurring, and to prevent infringing goods from entering into the channels of commerce. This includes preventing imported infringing goods from being disposed into domestic distribution channels immediately after customs clearance. The other purpose is to preserve relevant evidence in regard to the alleged infringement.

In order to accomplish these objectives, it may be necessary to take action without prior hearing of the other side. Therefore, the judicial authorities must have the authority to adopt provisional measures without hearing the defendant, where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.⁶

The courts may require the applicant to provide any reasonably available, adequate evidence that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent. The applicant may also be required to supply information necessary for the identification of the goods. Where provisional measures have been adopted without hearing the defendant, the parties affected must be given notice, without delay after the execution of the measures. The defendant has the right to a review, including a right to be heard, that shall take place with a view to deciding, within a reasonable

period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

Also, the provisions on provisional measures contain certain safeguards against abuse of such measures. The judicial authority may require the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse. Provisional measures shall, upon request by the defendant, be revoked or otherwise cease to have effect, if the applicant fails to initiate proceedings leading to a decision on the merits of the case within a reasonable period to be determined by the judicial authority concerned. In the absence of such a determination, this period may not exceed 20 working days or 31 calendar days, whichever is longer.

Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by these measures.

CRIMINAL PROCEDURES (Article 61 of TRIPS)

The fifth and final Section in the Enforcement Part of the TRIPS Agreement deals with criminal procedures. Provision must be made for these to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. The Agreement leaves it to Members to decide whether to provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property right, in particular where they are committed wilfully and on a commercial scale. While in some countries only trademark counterfeiting and copyright piracy are treated as criminal behaviour, other countries apply criminal procedures to nearly all forms of intellectual property infringements. Sanctions must include imprisonment and/or monetary fines sufficient to create a deterrence, consistent with the level of penalties applied for crimes of a corresponding gravity. Criminal remedies in appropriate cases must also include seizure, forfeiture and destruction of the infringing goods and of materials and instruments used to produce them.

SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES (Section 4 of Part III of TRIPS)

The emphasis in the Enforcement Part of the TRIPS Agreement is on, internal enforcement mechanisms, which, if effective, would enable infringing activity to be stopped at the source of production. Compared to special border measures, this is both a more efficient way of enforcing IPRs and one which is less liable to give rise to risks of discrimination against imports. However, the TRIPS Agreement recognizes that enforcement at the source of production will not always be possible and that in any event not all countries in the world are Members of the WTO and therefore, have obligations under the TRIPS Agreement. Consequently, the

Agreement recognizes the importance of border enforcement procedures that will enable right holders to obtain the cooperation of customs administrations so as to prevent the release of infringing imports from passing through the customs and entering into domestic distribution channels, which would often make it more difficult to take efficient action.

Until recently, few countries had given their customs services the authority to combat counterfeiting and piracy. However, in a number of countries, the courts now have the power to order that the release into free circulation, by the customs services, of counterfeit and pirated goods be suspended.⁷ For most countries, though, this Part of the Agreement will require the establishment of new legislation and the putting in place of new procedures.

Coverage. According to Article 51 of the Agreement, the goods which must be subject to border enforcement procedures must include at least counterfeit trademark or pirated copyright goods that are being presented for importation. These categories of goods are defined in footnote 14 to Article 51 as follows:

- “(a) ‘counterfeit trademark goods’ shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
- “(b) ‘pirated copyright goods’ shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of the copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.”

The Article leaves flexibility to Member governments on whether to include imports of goods which involve other infringements of IPRs. Members are also free to determine whether to apply these procedures to parallel imports. This is confirmed in footnote 13 to the Article, according to which it is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder. In accordance with Article 60, Members may exclude from the application of these procedures *de minimis* imports, i.e. small quantities of goods of a non-commercial nature contained in travellers’ personal luggage or sent in small consignments.

Article 51 leaves it to Members to decide whether to apply corresponding procedures to the suspension by customs authorities of infringing goods destined for exportation from their territories, or to goods in transit. In India, as seen in footnote 7, it applies to goods in transit.

The basic mechanism. The basic mechanism required by the Agreement is that each Member must have a “competent authority”, which could be administrative or judicial in nature to which applications by right holder for customs action shall be lodged. The Agreement leaves it to each Member to decide whether

the competent authority should be judicial or administrative in nature. In other words, it could be a judge who would issue a provisional court order for execution by the customs authorities or it could be a service within, for example, the customs administration itself with special responsibility for enforcement of IPRs.⁸ In practice, countries will have to find the most appropriate balance within their own legal system and practice between allowing for swift and effective action by the customs and the necessary judicial control in order to lessen the risks of abuse of the procedures.

The right holder lodging an application before/with the competent authority shall be required to provide adequate prima facie evidence that certain goods arriving at the border are infringing his IPR and to supply sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall then inform the right holder whether his application has been accepted and, if so, for what period, while giving the necessary directions to customs officers. After this, it is the responsibility of the right holder to pursue the matter further and initiate proceedings leading to a decision on the merits of the case.

Apart from the requirement in the Agreement to have in place a system under which action shall be taken on the basis of an application from a right holder, Members also have the option, in addition to the requirement, to require competent authorities to act upon their own initiative. Article 58 contains certain additional provisions applicable to such automatic action.

Safeguards against abuse. The TRIPS Agreement's Section on border measures requires the taking of what are essentially provisional measures against imports of infringing goods. The Section also stipulates a number of safeguards against abuse of the procedures, which are similar to those in Article 50 on provisional judicial measures. The competent authority may require the applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. However, such security or equivalent assurance may not be such as to unreasonably deter recourse to these procedures. The importer and the applicant must be promptly notified of the detention of goods.

If the right holder fails to initiate proceedings leading to a decision on the merits of a case within ten working days, the goods shall normally be released. Where goods involve the alleged infringement of industrial designs, patents, layout-designs or undisclosed information, the importer must be entitled to obtain their release on the posting of a security sufficient to protect the right holder from any infringement, unless provisional relief has been granted by a duly empowered authority.

Once judicial proceedings on the merits of a case have been initiated, the judicial authority may continue the suspension of the release of goods in accordance with a provisional judicial measure. In that case, the provisions on provisional measures in Article 50 shall be applied.

The applicant may be required to pay appropriate compensation to persons whose interests have been adversely affected by the wrongful detention of goods or through detention of goods released pursuant to the failure of the applicant to initiate in time proceedings leading to a decision on the merits of the case.

Dispute Prevention and Dispute Settlement

We have seen above how by providing for effective measures to enforce the IPRs, TRIPS Agreement is trying to prevent disputes.

We now discuss the main features of the WTO dispute settlement system.

Main Features of the WTO Dispute Settlement System (Article 64)

WTO Members are committed, if they wish to seek redress of a violation of a TRIPS obligation (or any other WTO obligation), to have recourse to, and abide by, the multilateral WTO dispute settlement procedures. In such cases, they undertake not to make a determination that a violation has occurred except in accordance with these procedures and not to retaliate except in accordance with authorization from the WTO's General Council (i.e., all WTO Members together) acting in its capacity of Dispute Settlement Body.

The WTO dispute settlement system is a strengthened version of the pre-existing GATT⁹ mechanism. Disputes which cannot be settled through consultations can be brought to a panel of three or five independent persons who, after hearing the parties to the dispute and obtaining such advice as they find appropriate, will make findings on the legal consistency of the contested measures. The major element of strengthening that has been introduced is the elimination of the means by which it has been possible for defending or losing countries to delay or block the dispute settlement process.

This has been done, on the one hand, by the introduction of stricter time limits for the different stages of the dispute settlement process and, on the other hand, by laying down that panel reports will be adopted, unless there is a consensus against their adoption in the Dispute Settlement Body. Thus, the system has become considerably more juridical in nature than hitherto. In the light of this more binding and automatic nature of panel findings, provision has been made for recourse to a standing Appellate Body (composed of seven persons, three of whom shall serve on any one case) whose findings are also subject to adoption by the DSB according to the same decision-making rule.¹⁰ Review by the Appellate Body shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel. Adoption of a panel report by WTO Members, acting through the Dispute Settlement Body (DSB), shall take place within 60 days after its circulation, unless a party to the dispute decides to appeal or the DSB by consensus decides not to adopt the report. The same rule applies with respect to Appellate Body reports, except that the time period for adoption is shorter, namely 30 days after the report's circulation.

Another important feature of the dispute settlement system should also be mentioned. This concerns what is often referred to as cross-retaliation; that is the extent to which it should be possible for an aggrieved Member country to withdraw concessions or obligations in another area of the WTO from a country failing to comply with a dispute settlement finding within a reasonable period of time, for example to curtail market access for textile or agricultural products as a result of failure to comply with a TRIPS panel ruling. As can be imagined, this was a particularly delicate part of the negotiations but a necessary component of an institutional link between the TRIPS Agreement and the other results of the Uruguay Round. Clearly, a system of world trade rules designed to be effective is only viable, if there is too much at stake for the countries involved in not complying with any of those rules or in not giving way to multilateral discipline. At the same time, it should be said that the dispute settlement system is very much designed so as to help the parties find a mutually agreed solution and has, in more than 45 years of experience under the GATT, only once led to an authorization to retaliate, which the country in question, in the end, did not carry out. This element of the system is more a threat that gives credibility to the system than anything else.¹¹

Experience with WTO Dispute Settlement in the Trips Area

Before discussing the experience so far with the formal use of the system, it should be emphasized that what surfaces by way of formal invocations is only the tip of the iceberg: in a very large number of cases, concerns about compliance are discussed and resolved through informal consultation between the interested WTO Members. It is normally only if such informal mechanisms do not yield satisfactory results that a WTO Member will have formal recourse to the dispute settlement system of the WTO.

In regard to the TRIPS Agreement, the dispute settlement system was formally invoked, upto September 1997, on ten occasions in respect of eight separate matters (i.e., in respect of each of two matters, separate complaints were made by two Members). In respect of the mailbox and exclusive marketing right arrangements in India for pharmaceutical and agricultural chemical products a panel was established which terminated its work recently and whose report became available on 5 September 1997. This first TRIPS panel found that India was not in compliance with its obligations under Articles 70.8 and 70.9 of the TRIPS Agreement. Adoption of the panel report was put on the agenda for the meeting of the Dispute Settlement Body scheduled for 16 October 1997.¹² A panel was also established on certain Indonesian measures affecting the automobile industry; the issues before this panel included a complaint relating to trademarks. In respect of three matters, the issues were resolved successfully as a result of the first stage of the formal procedures (consultation); these were the complaints about the protection of existing sound recordings in Japan, the mailbox and exclusive marketing right arrangements in Pakistan for pharmaceutical and agricultural chemical product and the term of protection for existing patents in Portugal.

In respect of three other matters -copyright and neighbouring right protection in Ireland, and the availability of provisional measures in the context of civil proceedings in Denmark and Sweden - bilateral consultations were under way. In all the cases referred to above, the United States was the complainant, with the European Community also making complaints in respect of two of the matters (those relating to the Japanese and Indian measures referred to).¹³

Position in 1999

In 1999, the following three Panels¹⁴ were active in the area of TRIPS.

- (1) EC's complaint against Canada in regard to patent protection of pharmaceutical products;
- (2) U.S. complaint against Canada regarding term of patent protection; and
- (3) E.C.'s complaint against U.S. in regard to section 110(5) of the U.S. Copyright Act.

Now we give same details about the first two :

(1) E.C.'s complaint against Canada

The European Communities said that while it supported the balance struck in the TRIPS Agreement between the Protection of Patents and the Promotion of Public Welfare, it believed that any lowering of standards with respect to the former would disturb this balance.

In its formal request, the E.C. claimed that Canada's legal regime allowing third parties, without the consent of the patent holder, to carry out experiments required for marketing approval, and the manufacture and stockpiling of patented products before the expiry of the patents concerned violated provisions of the TRIPS Agreement.

Canada maintained that its patent regime is part of a balanced approach that protects patent rights and allows immediate distribution of products after expiry of patents. It stressed this approach is consistent with the balance in the TRIPS Agreement between patent protection and societal rights. Canada warned that the E.C. request challenges government policies aimed at providing affordable access to pharmaceutical products, and thus should be of concern to all WTO members.¹⁵

(2) U.S. Complaint Against Canada

The United States complained that while the TRIPS Agreement provides for 20 years of patent protection, Canada granted only 17 years. It called on Canada to agree to a bilateral solution to the dispute as it believed that the result of the dispute settlement proceedings is obvious. Canada objected to the U.S. request and maintained that its patent regime is consistent with the TRIPS Agreement.¹⁶ A panel was appointed on September 22, 1999.

ENDNOTES

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¹ Matthijs Geuze, "Enforcement of Intellectual Property Rights and Dispute Settlement under the TRIPS Agreement", a paper presented at WIPO Asian Sub-Regional Symposium on the Implications of the TRIPS Agreement, New Delhi, October 15-17, 1997.

² For this purpose, counterfeit goods are in essence defined as goods involving slavish copying of trademarks, and pirated goods as goods which violate a reproduction right under copyright or a related right.

³ Some national legal systems allow the courts more flexibility than other systems. which are more based on a 'party trial' approach. The provision lays down that, in a situation where evidence that is likely to be important for one party is in the possession of the opposing party, the court must be empowered, provided that certain conditions are met, to order the latter party to produce that evidence. In addition, courts may be authorized to make their decisions on the basis of information presented to them, if a party refuses without good reason access to evidence that is in his or her possession, subject to providing the parties an opportunity to be heard.

⁴ A similar provision on counterfeit trademark goods is contained in Article 59 in Section 4 dealing with border measures.

⁵ A similar provision is contained in Article 57 of Section 4.

⁶ To deal with this kind of situation, the English Court of Appeal in *Anton Piller v. Manufacturing Processes* [1976] R.P.C.719 devised a proper relief which is now known as *Anton Piller* type of order.

⁷ In this connection, it may be noticed that in India as seen in *Penguin Books Ltd. v. India Book Distributors*, A.I.R. 1985 Del. 29, Messers Penguin Books Ltd, England were able to stop the imports (into India by Indian parties) which infringed their copyright. Likewise, in *Gramophone Company of India Ltd. v. Birendra Bahadur*, AIR 1984 SC 667, the Supreme Court held that the word 'import' in section 51 and 53 of the Copyright Act, 1957 meant 'bringing into India from outside India' and that it was not limited to importation for commerce only but included importation for transit across the country. As result of this interpretation, the court laid down an authority for the proposition that import of infringing material is to be stopped not only when the infringing material is to be used in India but also in the case when the infringing material is being taken through India to a foreign country. Thus, it is clear that in India the owner of the intellectual property has an enforceable right to prevent importation of infringing products.

⁸ The position in this regard under the (Malaysian) Copyright Act 1987 is as follows:

Restriction on importation of infringing copies.

(1) The owner of copyright in any work may give notice in writing to the Minister-

- (a) that he is the owner of the copyright in the work ; and
- (b) that he requests the Minister, during a period specified in the notice, to treat a prohibited goods copies of the work to which this section applies:

Provided that the period specified in a notice under this subsection shall not exceed such number of year as may be prescribed by the Minister under subsection (4) and shall not in any case, extend beyond the end of the period for which the copyright is to subsist.

(2) This section shall apply to any copy of a work made outside Malaysia the making of which was carried out without the consent or licence of the owner of the copyright in the work.

(3) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation of any infringing copies into Malaysia for the duration of the period specified in the notice shall be prohibited:

Provided that this subsection shall not apply to the importation of any copy by a person for his private and domestic use.

(4) The Minister may make regulations prescribing the form in which notices are to be given under this section and requiring a person giving such notice , either at time of giving the notice or at the time when the infringing copies are imported, or at both those times, to furnish such evidence and to comply with such other conditions, if any , as may be specified in the regulations.

Under this provision, **Copyright (Notice of Prohibition of Import) Regulation 1987** was promulgated and is in force.

⁹ See Article 64 of TRIPS Agreement

¹⁰ **Elements of the dispute settlement procedure:**

- Consultations aimed at a mutually agreed solution are encouraged throughout the procedures and are, in any case, a mandatory first stage of the proceedings in any given case.
- Request by the aggrieved party to the Dispute Settlement Body (DSB) for the establishment of a panel ,which should make recommendations to the DSB unless a mutually agreed solution is found.
- Possibility of appeal to the WTO's Appellate Body (seven persons, of which three serve on any one case). Appeal suspends a decision by the DSB on the panel report. A mutually agreed solution terminates the proceedings.

- The DSB adopts a panel or Appellate Body report unless it decides by consensus not to adopt the report (in case of appeal, 12 to 15 months after the proceedings started).
- WTO Member is to inform the DSB as to how it intends to comply with the ruling (60 days). A disagreement about the intended time-period for implementation is subject to binding arbitration (90 days). A disagreement about whether the intended implementation is consistent with the panel or Appellate Body ruling is to be decided by the DSB after dispute settlement proceedings before wherever possible, the original panel (90 days).
- In case of non-compliance with the ruling, the aggrieved party has the possibility to request to negotiate a mutually acceptable compensation and, if such negotiations fail, to request the DSB to authorize retaliation by the suspension of concessions. Objection to level suspension is subject to binding arbitration (60 days).
- Implementation of the ruling kept under surveillance in the DSB.

¹¹ See Matthijs Geuze, "Mechanisms in the WTO Framework Aimed At Ensuring Compliance with Obligations under the TRIPs Agreement", paper presented at WIPO Asian Sub Regional Symposium on the Implications of the TRIPS Agreement, New Delhi, October, 15-17, 1997.

¹² This panel report was approved by the Dispute Settlement Body (DSB). However, since India filed petition against the ruling, adoption of the panel report was put off — see *The Hindustan Times*, of October 17, 1997 under the heading, "Pressure on India to change Patent Laws"

¹³ See Matthijs Geuze, *loc. cit.*

¹⁴ See *FOCUS*, WTO Newsletter (No. 43, November 1999) p.3.

¹⁵ See *Focus*, WTO Newsletter (No. 37 January-February 1999), p. 5. The same issue of the *Focus* also stated on p. 6 that the panel report in the complaint of EC against India in regard to patent protection for pharmaceutical and agricultural chemical products, was adopted by the Dispute Settlement Body (DSB) on September 2, 1998.

¹⁶ See *Focus*, WTO Newsletter (No. 41, July - August 1999) p. 7.