

ANNEX D
MISCELLANEOUS

Contents		Page
Annex D-1	Request for the Establishment of a Panel by Australia	D-2
Annex D-2	Letter dated 9 July 2004 from the Panel to the International Bureau of WIPO	D-4
Annex D-3	Reply from the International Bureau of WIPO to the Panel's Letter dated 9 July 2004, received by the Panel and the WTO Secretariat on 14 September 2004	D-5

WORLD TRADE ORGANIZATION

WT/DS290/18
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EUROPEAN COMMUNITIES – PROTECTION OF TRADEMARKS AND GEOGRAPHICAL INDICATIONS FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS

Request for the Establishment of a Panel by Australia

The following communication, dated 18 August 2003, from the Permanent Mission of Australia to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have instructed me to request the establishment of a panel on behalf of Australia.

On 17 April 2003, Australia requested consultations with the European Communities (EC) 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), Article 64 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement) and Article 14 of the *Agreement on Technical Barriers to Trade* (TBT Agreement) concerning the protection of trademarks and the registration and protection of geographical indications for foodstuffs and agricultural products in the EC. The request was circulated to Members on 23 April 2003 in document WT/DS290/1. Consultations were held on 27 May 2003 but did not lead to a resolution of the dispute.

Consequently, Australia requests that a panel be established pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of GATT 1994, Article 64 of the TRIPS Agreement and Article 14 of the TBT Agreement.

The measure at issue is Council Regulation (EEC) No. 2081/92 of 14 July 1992 *on the protection of geographical indications and designations of origin for agricultural products and foodstuffs*, any amendments thereto (including Council Regulation (EC) No. 692/2003 of 8 April 2003, published in the *Official Journal of the European Union* No. L99 of 17 April 2003), and related implementing and enforcement measures ("the EC measure"). The EC measure lays down and implements rules on the protection of designations of origin and geographical indications for agricultural products and foodstuffs, excluding wines and spirits.

Australia is of the view that the EC measure:

- diminishes the legal protection for trademarks under the TRIPS Agreement, contrary to Articles 1, 2 (incorporating by reference Articles 6*quinques*(B), 10, 10*bis* and 10*ter* of the Paris Convention (1967)), 16, 20, 24.5, 41 and/or 42 of the TRIPS Agreement;
- does not accord immediately and unconditionally to the nationals and/or products of each WTO Member any advantage, favour privilege or immunity granted to the nationals of any other WTO Member, contrary to Articles 1 and 4 of the TRIPS Agreement and/or Article I:1 of GATT 1994;
- does not accord to nationals and/or products of each WTO Member treatment no less favourable than that it accords to its own nationals and/or like products of national origin, contrary to Articles 1, 2 (incorporating by reference Article 2 of the Paris Convention (1967)) and 3.1 of the TRIPS Agreement and/or Article III:4 of GATT 1994;
- does not provide the legal means for interested parties to prevent misleading use of a geographical indication and/or to prevent any use of a geographical indication which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967), contrary to Articles 1 and 22.2 of the TRIPS Agreement;
- is not applied in a transparent manner, contrary to Articles 1, and 63.1 and 63.3 of the TRIPS Agreement;
- is a technical regulation within the meaning of Annex 1 to the TBT Agreement, does not accord to products imported from the territory of any WTO Member treatment no less favourable than that accorded to like products of national origin and/or to like products originating in any other country, and/or has been prepared, adopted and/or applied with the effect of creating unnecessary obstacles to trade, being more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create, contrary to Articles 2.1 and 2.2 of the TBT Agreement;

and that, as a consequence of the EC measure's inconsistency with the abovementioned provisions of the TRIPS Agreement, GATT 1994 and/or the TBT Agreement, the EC is not in conformity with its obligations:

- under Article 65.1 of the TRIPS Agreement to apply the provisions of that Agreement, as the period of one year following the date of entry into force of the WTO Agreement has expired; and/or
- under Article XVI.4 of the *Marrakesh Agreement Establishing the World Trade Organization*, to ensure the conformity of its laws, regulations and administrative procedures with its obligation as provided in the annexed Agreements.

Australia requests the establishment of a panel with terms of reference in accordance with Article 7.1 of the DSU.

I would be grateful if you would place this item on the agenda for the next DSB meeting scheduled for 29 August 2003.

ANNEX D-2

LETTER DATED 9 JULY 2004 FROM THE PANEL TO THE INTERNATIONAL BUREAU OF WIPO

At its meeting on 2 October 2003, the WTO Dispute Settlement Body established the Panel on European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs pursuant to the requests by the United States in document WT/DS174/20 and Australia in document WT/DS290/18 (please see the attached documents), in accordance with Article 9 of the Dispute Settlement Understanding. On 23 February 2004, a Panel was composed to examine this complaint (please see the attached document with a dual symbol WT/DS174/21 and WT/DS290/19).

A number of provisions of the Paris Convention have been raised in these proceedings as relevant to the interpretation of the European Communities' obligations under the TRIPS Agreement. Given that the International Bureau of WIPO is responsible for the administration of that Convention, the purpose of this letter is to request, on behalf of the panel, the assistance of the International Bureau of WIPO in the form of any factual information available to it relevant to the interpretation of the provisions in question, in particular as reflected in the materials of diplomatic conferences, subsequent developments in the framework of the Paris Union or other work under the auspices of the WIPO as well as, to the extent available to the International Bureau, on the state practice of the Paris Union members.

The specific provisions of the Paris Convention in regard to which the panel would seek this assistance at this stage are:

- Article 2 of the Stockholm Act of 1967 of the Paris Convention, in particular as regards:
 - (a) the national treatment obligation contained in that provision; and
 - (b) the intended meaning of the term "national" used therein.
- Any other provisions, of relevance to the categories of intellectual property at issue in this dispute, which set out criteria for the eligibility of natural or legal persons for protection under the Paris Convention (1967).

The Panel may, at a later stage, wish to seek from the International Bureau further such information on other provisions of the Paris Convention (1967) that have been referred to by the parties to the dispute.

It would facilitate the work of the Panel if such information could be made available by Thursday, 29 July 2004.

ANNEX D-3

**REPLY FROM THE INTERNATIONAL BUREAU OF WIPO
TO THE PANEL'S LETTER DATED 9 JULY 2004,
RECEIVED BY THE PANEL AND THE WTO SECRETARIAT
ON 14 SEPTEMBER 2004**

I refer to your letter of July 9, 2004, addressed to the Director General of the World Intellectual Property Organization (WIPO), relating to the Panel established by the WTO Dispute Settlement Body to examine two ongoing disputes on the basis of the matter referred to in WTO documents WT/DS174/20 and WT/DS290/18.

In response to your request, please find attached a note with five annexes prepared by the International Bureau.

On behalf of WIPO, I wish to reiterate our readiness to provide any further assistance.

**List of Materials from Diplomatic Conferences Adopting, Revising and Amending
Articles 2 and 3 of the Paris Convention for the Protection of Industrial Property (1967)**

General

This note contains a list of the materials that the International Bureau of the World Intellectual Property Organization (WIPO) has compiled following a request for assistance as contained in a letter, dated July 9, 2004, received from Mr. Miguel Rodríguez Mendoza, Chairman of the Panel on European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs established by the WTO Dispute Settlement Body.

The Panel has sought the assistance of the International Bureau of WIPO, at this stage, in respect of Article 2 of the Paris Convention for the Protection of Industrial Property (Stockholm Act of 1967) and any other provisions, of relevance to the categories of intellectual property at issue in this dispute, which set out criteria for the eligibility of natural or legal persons for protection under the Paris Convention requesting, as indicated in the letter in question, "the assistance of the International Bureau in the form of any factual information available to it relevant to the interpretation of the provisions in question, in particular as reflected in the materials of diplomatic conferences, subsequent developments in the framework of the Paris Union or other work under the auspices of the WIPO as well as, to the extent available to the International Bureau, on the state practice of the Paris Union members."

The Panel's request would, at this stage, appear to concern:

- (i) the national treatment obligation contained in Article 2 of the Paris Convention and the intended meaning of the term "national" used therein; and
- (ii) the criteria for determining the eligibility of natural or legal persons to enjoy protection under the Paris Convention.

The materials compiled by the International Bureau in respect of these two items and listed below are confined to Articles 2 and 3 of the Paris Convention. Article 2 refers to what is generally referred to as the "national treatment" obligation. Article 3 provides for the assimilation of certain persons with "nationals" of the Paris Union. Both articles apply generally to all categories of industrial property under the Paris Convention.

The International Bureau understands that the Panel's request for information does not extend to the question of a person's "eligibility" under any specific provision of the Paris Convention resulting from compliance with the particular requirements specified by such provision in addition to the qualification of that person under Articles 2 and 3.

The materials compiled include excerpts from the Official Records of the various Diplomatic Conferences which adopted, amended or revised the provisions currently contained in Articles 2 and 3 of the Paris Convention (Stockholm Act of 1967). These provisions were last changed at the Revision Conference held at The Hague in 1925, and have not been amended since.

The official records of the diplomatic conferences, from which the excerpts listed below have been extracted, are only available in the French language. The English translations of the successive versions of Articles 2 and 3 as included in the abovementioned Acts of the Paris Convention have been prepared by the International Bureau of WIPO and are also attached.

1. Excerpts from the Records of the Paris Diplomatic Conference (1880/1883)

A. Conférence internationale pour la protection de la propriété intellectuelle (1880)

General

Pages 11 to 24 (*Procès-verbal de la première séance*)

Pages 25 to 41 (*Procès-verbal de la deuxième séance*)

Article 2

Pages 42 to 47 (*Procès-verbal de la troisième séance*)

Articles 2 and 3

Pages 123 to 132 (*Procès-verbal de la neuvième séance*)

Article 3

Pages 137 to 138, 147 to 150 (*Procès-verbal de la dixième séance*)

Pages 161 to 167 (*Séance de clôture, Projet de convention et Protocole de clôture*)

B. Conférence internationale pour la protection de la propriété intellectuelle (1883)

General

Pages 3, 51 to 62 (*Convention et Protocole de clôture*)

2. Excerpts from the Records of the Brussels Revision Conference (1897/1900)

Article 2

Pages 89 and 95 to 97 (*Proposition présentée par l'Administration des États-Unis*)

Pages 143 to 144 (*Première annexe au procès-verbal de la Réunion préparatoire du 1^{er} décembre 1897 – Tableau général des propositions, contre-propositions et amendements soumis à la conférence*)

Articles 2 and 3

Pages 163 and 164 (*Proposition présentée par la Délégation française au cours de la réunion préparatoire du 1^{er} décembre 1897*)

Pages 185, 187, 188 (*Procès-verbal de la deuxième séance – 4 décembre 1897*)

Pages 195 to 200 (*Procès-verbal de la troisième séance – 6 décembre 1897*)

Pages 309 to 311 (*Procès-verbal de la neuvième séance – 13 décembre 1897*)

Page 341 (*Premier protocole final - 14 décembre 1897*)

General

Pages 407, 410 to 412 (*Acte additionnel du 14 décembre 1900 modifiant la Convention du 20 novembre 1883 ainsi que le Protocole de clôture y annexé*)

3. Excerpts from the Records of the Washington Revision Conference (1911)

Article 2

Pages 42 to 44 and 53 (*Exposé des motifs et propositions préparé par le Bureau international; II. Personnes protégées et étendue de la protection; Juridiction*)

Pages 58 and 59 (*Avant-projet d'une Convention pour la protection de la propriété industrielle*)

Articles 2 and 3

Pages 94, 105, 106, 109 and 110 (*Propositions, contre-propositions et observations présentées par diverses administrations : 2. Administration de la France; 3. Administration de la Grande-Bretagne; 4. Administration des Pays-Bas*)

Pages 183 to 187 (*Procès-verbal de la réunion préparatoire, première annexe : Tableau général des propositions, contre-propositions et amendements soumis à la Conférence*)

Pages 223 and 224 (*Procès-verbal de la réunion préparatoire, deuxième annexe : Propositions présentées au cours de la réunion préparatoire*)

Page 226 (*Procès-verbal de la réunion préparatoire, troisième annexe : Nouvelle rédaction pour les articles 1, 2, 5 à 9, 11, et 16 de l'avant-projet*)

Pages 245 to 247 (*Procès-verbal de la troisième séance*)

Pages 269 to 271 (*Premier rapport présenté au nom de la sous-commission chargée d'examiner les articles 1 et 2 de la Convention*)

Pages 306, 307, 310 to 312 (*Rapport présenté à la commission plénière*)

Page 331 (*Actes adoptés par la Conférence*)

4. Excerpts from the Records of the Hague Revision Conference (1925)

Article 2

Pages 222 to 225 (*Exposé des motifs et propositions; II Principes fondamentaux de la Convention*)

Page 267 (*Avant-projet de la Convention de Paris révisée pour la protection de la propriété industrielle; Texte unique révisé*)

Page 333 (*Propositions, contre-propositions et observations*)

Page 413 to 415 (*Rapport de la première sous-commission*)

Page 517 (*Rapport de la commission générale à la conférence*)

Pages 536 to 537 (*Rapport de la commission de rédaction*)

Page 572 (*Procès-verbal de la deuxième séance plénière*)

Article 3

This provision was not discussed at the Hague Revision Conference.

5. English translations of Articles 2 and 3 as contained in the 1883, 1900, 1911 and 1925 Acts of the Paris Convention
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