

INDIA – PATENTS (EC)¹ (DS79)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>European Communities</i>	<i>TRIPS Arts. 70.8 and 70.9</i>	Establishment of Panel	<i>16 October 1997</i>
			Circulation of Panel Report	<i>24 August 1998</i>
Respondent	<i>India</i>		Circulation of AB Report	<i>NA</i>
			Adoption	<i>22 September 1998</i>

1. MEASURE AND INTELLECTUAL PROPERTY AT ISSUE

- Measure at issue: (i) The insufficiency of the legal regime – India's "mailbox rule" – under which patent application for pharmaceutical and agricultural chemical products could be filed; and (ii) the lack of a mechanism for granting exclusive marketing rights to such products.
- Intellection property at issue: Patent protection for pharmaceutical and agricultural chemical products, as provided under TRIPS Agreement Art. 27.

2. SUMMARY OF KEY PANEL FINDINGS²

- TRIPS Art. 70.8: The Panel held that India's filing system based on "administrative practice" for patent applications for pharmaceutical and agricultural chemical products was inconsistent with TRIPS Art. 70.8. The Panel found that the system did not provide the "means" by which applications for patents for such inventions could be securely filed within the meaning of Art. 70.8(a), because, in theory, a patent application filed under the current administrative instructions could be rejected by the court under the contradictory mandatory provisions of the pertinent Indian law – the Patents Act of 1970.
- TRIPS Art. 70.9: The Panel found that there was no mechanism in place in India for the grant of "exclusive marketing rights" for pharmaceutical and agricultural chemical products and thus TRIPS Art. 70.9 had been violated.

¹ *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products* (complaint by the EC). This dispute concerns the same factual issues and the same legal analyses/conclusions as those involved in the *India – Patents* case brought by the United States.

² Other issues addressed: multiple complainants (DSU Art. 19.1); original panel (DSU Article 10.4); *stare decisis* (binding nature of WTO precedent).