

GENERAL AGREEMENT ON

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UNITED STATES - SECTION 337 OF THE TARIFF ACT OF 1930

STATUS OF IMPLEMENTATION OF PANEL REPORT

Communication from the United States

The following communication, dated 18 September 1992, has been received from the Office of the United States Trade Representative with the request that it be circulated in connection with the item entitled "Monitoring of Non-Implemented Panel Reports" on the agenda of the Council meeting to be held on 29 September 1992.

Status of Implementation of Section 337 Panel Report

In connection with Council consideration of the agenda item on implementation of panel reports, the United States advises contracting parties of the status of implementation of the recommendations of the report of the Panel on "United States - Section 337 of the Tariff Act of 1930." This communication is submitted autonomously. It is not submitted pursuant to the Decision of 12 April 1989 on Improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36S/61). Paragraph A.3 of that Decision states explicitly that "... the improvements set out below ... shall be applied ... in respect of complaints brought [from 1 May 1989 to the end of the Uruguay Round] under Article XXII or XXIII ...". As the complaint at issue was brought on 22 April 1987, the Decision expressly is not applicable.

When the GATT Council adopted the section 337 panel report, President Bush reaffirmed the U.S. commitment both to the GATT dispute settlement mechanism and to the effective enforcement of intellectual property rights. The United States has given the highest priority to the development of an effective, GATT-consistent section 337 mechanism -- i.e., a mechanism that resolves the procedural difficulties found with section 337 of the Tariff Act of 1930, as amended. In a policy statement made when the panel report was adopted, President Bush noted that enactment of legislation amending section 337 could most effectively occur through Uruguay Round implementing legislation. That Administration policy decision remains unchanged.

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Since January 1990 a task force has worked diligently towards developing a consensus within the United States on how to amend section 337 to address the GATT panel's recommendations. We have consulted with legal experts, academicians, and companies that have used section 337 to enforce their U.S. patent rights. We also have paid close attention to the work done in the negotiations on trade-related aspects of intellectual property rights (TRIPs), as that draft agreement addresses the issue of enforcement of intellectual property rights at the border.

To date, there is no consensus within the United States on how to amend section 337 so that it would continue to provide effective enforcement of patent rights against infringing imports and would be fully consistent with the provisions of the General Agreement.

That said, President Bush and the U.S. Congress are aware of the U.S. commitment to amend section 337 and confirm our intention to do so.