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1.1 Text of Article 7

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Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

1.2 General

1. The Panel in *Australia – Tobacco Plain Packaging*, in considering the types of reasons that may sufficiently support the application of special requirements not to be considered to "unjustifiably" encumber the use of a trademark in the course of trade within the meaning of Article 20, noted that:

"Articles 7 and 8, together with the preamble of the TRIPS Agreement, set out general goals and principles underlying the TRIPS Agreement, which are to be borne in mind when specific provisions of the Agreement are being interpreted in their context and in light of the object and purpose of the Agreement."¹

2. As regards Article 7 specifically, the same Panel observed that:

"Article 7 reflects the intention of establishing and maintaining a balance between the societal objectives mentioned therein."²

3. The same Panel took the view that paragraph 5 of the Doha Declaration on the TRIPS Agreement and Public Health may be considered to constitute a "subsequent agreement" of WTO Members within the meaning of Article 31(3)(a) of the Vienna Convention. The Panel noted that:

"The guidance provided by the Doha Declaration is consistent, as the Declaration itself suggests, with the applicable rules of interpretation, which require a treaty interpreter to take account of the context and object and purpose of the treaty being interpreted, and confirms in our view that Articles 7 and 8 of the TRIPS Agreement provide important context for the interpretation of Article 20."³

1.3 Relationship with other provisions

4. The Panel in *US – Section 211 Appropriations Act* offered the following observations on Article 7:

"Article 7 of the TRIPS Agreement states that one of the objectives is that '[t]he protection and enforcement of intellectual property rights should contribute ... to a balance of rights and obligations.' We consider this expression to be a form of the good faith principle. The Appellate Body in *United States—Shrimps* stated that this

¹ Panel Reports, *Australia – Tobacco Plain Packaging*, para. 7.2402.

² Panel Reports, *Australia – Tobacco Plain Packaging*, para. 7.2403.

³ Panel Reports, *Australia – Tobacco Plain Packaging*, para. 7.2411.

principle 'controls the exercise of rights by states. One application of this principle, the application widely known as the doctrine of *abus de droit*, prohibits the abusive exercise of a state's rights and enjoins that whenever the assertion of a right 'impinges on the field covered by [a] treaty obligation, it must be exercised bona fide, that is to say reasonably.' An abusive exercise by a Member of its own treaty right thus results in a breach of the treaty rights of the other members and, as well, a violation of the treaty obligation of the Member so acting.'⁴ Members must therefore implement the provisions of the TRIPS Agreement in a manner consistent with the good faith principle enshrined in Article 7 of the TRIPS Agreement."⁵

5. In the context of interpreting Article 30, the Panel in *Canada – Pharmaceutical Patents* stated that:

"Obviously, the exact scope of Article 30's authority will depend on the specific meaning given to its limiting conditions. The words of those conditions must be examined with particular care on this point. Both the goals and the limitations stated in Articles 7 and 8.1 must obviously be borne in mind when doing so as well as those of other provisions of the TRIPS Agreement which indicate its object and purposes."⁶

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⁴ (footnote original) Appellate Body Report, *United States—Shrimps*, para. 158.

⁵ Panel Report, *US – Section 211 Appropriations Act*, para. 8.57.

⁶ Panel Report, *Canada – Pharmaceutical Patents*, para. 7.26.