

WORLD TRADE ORGANIZATION

WT/GC/W/256
19 July 1999

(99-2978)

General Council

Original: English

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Extension of the Five-Year Period in Article 64.2 of the Agreement on TRIPS

Communication from Canada

The following communication, dated 16 July 1999, has been received from the Permanent Mission of Canada.

Introduction

1. Article 64, paragraph 1, of the Agreement on TRIPS provides for a non-violation nullification or impairment (non-violation) remedy under the Agreement. Paragraph 2 of Article 64 stipulates that the non-violation remedy "shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement." The reason for the moratorium, as outlined in paragraph 3 of Article 64, is to enable the Council for TRIPS to examine the scope and modalities for non-violation complaints in the context of TRIPS and make recommendations to the Ministerial Conference. Canada is concerned that, to date, there has been no substantive discussion on scope and modalities by the Council for TRIPS as required under paragraph 3 of Article 64.

2. The non-violation remedy was developed in a context wholly different from TRIPS as a means of ensuring market access. In Canada's view, transplanting this remedy into the TRIPS environment is not suitable in the context of IP and will introduce uncertainty into the Agreement, constraining Members' abilities to introduce new and perhaps vital measures such as those related to social, economic development, health and environmental objectives. Canada raised these concerns in its non-paper, submitted to the Council for TRIPS, dated 10 February 1999 (IP/C/W/127). In order to examine properly such concerns, and given concerns expressed by many Members (see, for example, document IP/C/W/141), and in order to produce results acceptable to all Members, there is a clear need to extend the period in paragraph 2 of Article 64.

Proposal

3. Canada submits for consideration the following proposal:

Given that the Council for TRIPS has not examined, as required under paragraph 3 of Article 64 of the Agreement on TRIPS, the scope and modalities for complaints of the type

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provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to the Agreement on TRIPS, and given that more time is necessary in order to fulfil the requirements of Article 64, paragraph 3 of the Agreement on TRIPS and in order to examine genuine and widely-expressed concerns regarding the effect of such a provision in the context of intellectual property, it is recommended that the period in paragraph 2 of Article 64 of the Agreement on TRIPS be extended until such work is completed.
