# 1

# Introduction

## 1.1 The cuckoo's egg

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is the world's most comprehensive multilateral treaty on intellectual property, and the only multilateral treaty in its field with a functioning mechanism to settle disputes between governments. That mechanism is the Dispute Settlement Understanding (DSU) operated by the World Trade Organization (WTO). Yet TRIPS and the DSU each build on systems that developed independently; in the case of TRIPS, the intellectual property system that developed from the late nineteenth century in the Paris and Berne Conventions now administered by WIPO; in the case of the DSU, the multilateral trading system that developed from the mid-twentieth century in the General Agreement on Tariffs and Trade (GATT). TRIPS is an intellectual property agreement negotiated and implemented within the multilateral trading system, like a cuckoo's egg laid and hatched in the nest of another species. This book examines what happens when a mechanism designed for trade agreements is applied to intellectual property disputes.

An international dispute settlement process was an essential element of the proposals for a comprehensive new intellectual property treaty in the 1980s[1] but investigations under national trade procedures were

[1] *Global Competition: The New Reality: The Report of the President's Commission on Industrial Competitiveness*, Appendix D, 'Preserving America's Industrial Competitiveness – A Special Report on the Protection of Intellectual Property Rights' (October 1984) (US Government Printing Office, Washington DC, 1985) 347; GATT Preparatory Committee, 'Trade and Intellectual Property Rights', Communication from the United States, PREP.COM(86)/W/46 (8 July 1986) 3; Uruguay Round Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, Suggestion by the United States for Achieving the Negotiating Objective, MTN.GNG/NG11/W/14 (20 October 1987) 3–4; Suggestion by Switzerland for Achieving the Negotiating Objective, MTN.GNG/NG11/W/15 (26 October 1987); Guidelines Proposed by the European Community for the Negotiations on Trade-Related Aspects of Intellectual Property Rights, MTN.GNG/NG11/W/16 (20 November 1987) 3; Suggestion by Japan for Achieving the Negotiating Objective, MTN.GNG/NG11/W/17

instrumental in reaching consensus to negotiate such an agreement in the GATT framework. Shortly before the mid-term review meeting of the Uruguay Round trade negotiations in 1988, the United States imposed increased import duties of 100 per cent ad valorem on certain products from Brazil (a trade measure) due to that country's lack of patent protection for pharmaceuticals (an intellectual property matter).[2] Brazil responded by presenting a request for a GATT dispute settlement panel during the mid-term review meeting[3] and the Uruguay Round promptly stalled due to intellectual property and three other subjects.[4] In the months that followed, the GATT panel was established[5] and agreement was reached on the list of issues to be covered in the negotiations on TRIPS (and the other outstanding subjects).[6] That list reads like the table of contents of the final text of TRIPS and prominently includes multilateral dispute prevention and settlement.

The DSU was the vehicle eventually chosen to implement the negotiators' conflicting objectives of authorizing, or preventing, trade sanctions in intellectual property matters. On substance, TRIPS is far more closely linked to the WIPO conventions but, in terms of form, it was made part of the WTO and its integrated dispute settlement mechanism. Now, twenty years later, a fault-line can be traced at the interface of intellectual property law and trade law in dispute settlement. This line connects issues as diverse as the causes of action, the standard of review, the burden of proof, the interpretation of specialized terms, the treatment of public policy objectives, overlap and conflict between covered agreements, the effectiveness of sanctions and the availability of non-violation complaints.

(23 November 1987) 4. See Thomas Cottier, 'The Prospects for Intellectual Property in GATT', *Common Market Law Review*, 28 (1991) 383–414: 393.

[2] President of the United States of America, Proclamation 5885 of 20 October 1988, 53 Fed. Reg. 41551.

[3] GATT Council, *United States – Import Restrictions on Certain Products from Brazil*, Recourse to Article XXIII:2 by Brazil, Communication from Brazil, 7 December 1988, L/6386/Add.1.

[4] Uruguay Round Trade Negotiations Committee, 'Meeting at Ministerial Level, Palais Des Congrès, Montreal (Canada) 5–9 December 1988, MTN.TNC/8(MIN)' 12. The other three subjects were agriculture, textiles and clothing, and safeguards.

[5] GATT Council, Minutes of Meeting on 21 February 1989, C/M/229, Item 1.

[6] Uruguay Round Trade Negotiations Committee, Meeting at level of high officials, Geneva, 5–8 April 1989, MTN.TNC/9 (Mid-Term Review Decision) 9–10. See Frederick M Abbott, 'Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework', *Vanderbilt Journal of Transnational Law*, 22 (1989) 689–744: 717–20.

This book seeks to provide a comprehensive account of the unique problems in dispute settlement that are raised by the implementation of TRIPS in the WTO. It adopts a horizontal approach, focussing on dispute settlement rules, procedures and practices as they apply across the whole TRIPS text. It is intended to complement the article-by-article approach followed in commentaries on the TRIPS Agreement and to shed light on the implications for new WTO agreements.

This chapter begins by noting TRIPS' twin objectives for dispute settlement in light of recourse to multilateral and unilateral mechanisms in intellectual property matters prior to the conclusion of the agreement. The chapter reviews the reasons why the GATT dispute settlement process was considered a possible means to attain those objectives and recalls the TRIPS negotiators' main concerns regarding its suitability for this purpose. The chapter notes the extraordinary institutional and sanctions linkages that integrate yet separate TRIPS in the WTO and the DSU and contrasts them with the ordinary dispute settlement rules and procedures that apply in TRIPS disputes and the core business of the system in practice. The chapter teases out the implications of this survey into a set of themes, which are explored in the following chapters.

## 1.2 Dispute settlement before TRIPS

The text of TRIPS contains only one article on dispute settlement but this issue generated the momentum that propelled the rest of the agreement into the WTO. TRIPS is the only covered agreement that identifies and also emphasizes among its objects and purposes the importance of providing a dispute settlement mechanism. Both points reflect the changes to the international intellectual property landscape that the negotiators sought to bring about through the conclusion of TRIPS.

The second recital in the TRIPS preamble responds to the inadequacies of the dispute settlement provisions in the WIPO conventions. It lists the five broad areas in which the agreement provides new rules and disciplines, including basic principles, minimum standards of intellectual property protection and means of domestic enforcement, backed up by the following:

> (d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments;

The seventh recital responds to the unilateral procedures used in intellectual property disputes prior to and during the TRIPS negotiations as follows:

> *Emphasizing* the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Both recitals were agreed in the Mid-Term Review Decision of 1989, which set out the issues to be covered in the TRIPS negotiations.[7] Together, they reflect the negotiators' goals of transforming the means of handling disagreements between governments regarding intellectual property matters. In order to assess how well TRIPS has achieved that goal, it is necessary to look back to the pre-existing state of affairs.

### 1.2.1 *Inadequacies of mechanisms under the WIPO Conventions*

The lack of any functioning mechanism of dispute settlement between governments under the WIPO conventions was a major concern for advocates of stronger international intellectual property protection.[8] Even before the Uruguay Round, the proponents of a GATT anti-counterfeiting code drew attention to this shortcoming of the Paris Convention. They submitted that Paris was not structured to provide for effective mechanisms of consultation, surveillance and dispute settlement as the clause allowing a party to bring a dispute before the International Court of Justice did not meet these requirements. A quarter of the contracting parties to Paris at the time were not even bound by that provision.[9] The Assembly of the Paris Union has no jurisdiction

[7] Mid-Term Review Decision (note 6) 9–10. See Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis*, 4th ed. (Sweet & Maxwell, 2012) paras. 2.08–2.09.

[8] GATT Preparatory Committee, 'Trade and Intellectual Property Rights', Communication from the United States (note 1) 2–3; Uruguay Round Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, 'Suggestion by the United States for Achieving the Negotiating Objective' (note 1) 2; David Hartridge and Arvind Subramanian, 'Intellectual Property Rights: The Issues in GATT', *Vanderbilt Journal of Transnational Law*, 22 (1989) 893–910: 908; Abbott (note 6) 703–4; Jörg Reinbothe and Anthony Howard, 'The State of Play in the Negotiations on Trips (GATT/Uruguay Round)', *European Intellectual Property Review*, 5 (1991) 157–64: 157; Thomas Cottier, 'Intellectual Property in International Trade Law and Policy: The GATT Connection', *Aussenwirtschaft*, 47 (1992) 79–105: 83.

[9] GATT, Report of the Group of Experts on Trade in Counterfeit Goods, L/5878 (9 October 1985) para. 14.

regarding implementation by its member states[10]; controversies can be resolved through revision conferences, but conferences in the early 1980s could not reach agreement on how to revise Paris' standards of protection.[11]

The TRIPS proponents addressed the lack of dispute settlement under the WIPO conventions early in the Uruguay Round negotiations.[12] They pointed out that the jurisdiction of the International Court of Justice is based on consent and that the clauses granting it jurisdiction under the Paris and Berne Conventions are optional.[13] Among the extensive information that WIPO provided to the TRIPS negotiating group regarding the Paris, Berne, Rome and UPOV Conventions, the data on international dispute settlement mechanisms was conspicuously brief; it simply noted the competence of the International Court under each convention and the numbers of parties bound or not by each jurisdictional clause.[14] The WIPO Guide to the Rome Convention (quoted by the GATT Secretariat) was more candid, stating that the jurisdictional provision in that convention may create difficulties for certain States but that 'its practical effect should not be over-emphasised'. It continued:

[10] Paris Convention (1967), Article 13(2). Paragraph (a)(i) refers to implementation by the WIPO Secretariat and other organs of the Union: see G H C Bodenhausen, *Guide to the Application of the Paris Convention for the Protection of Industrial Property: As Revised at Stockholm in 1967* (BIRPI, 1969, WIPO Publication No. 611) 108. Regarding enforcement of Paris treaty obligations, see Hans Peter Kunz-Hallstein, 'The U.S. Proposal for a GATT-Agreement on Intellectual Property and the Paris Convention for the Protection of Industrial Property' in Friedrich-Karl Beier and Gerhard Schricker (eds.), *GATT Or WIPO?: New Ways in the International Protection of Intellectual Property* (VCH, 1989) 87–91.

[11] Kunz-Hallstein (note 10) 77–8; Jayashree Watal, *Intellectual Property Rights in the WTO and Developing Countries* (Kluwer Law International, 2001) 16; UNCTAD-ICTSD Capacity Building Project on IPRs, *Resource Book on TRIPS and Development* (2005) 3.

[12] Uruguay Round Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, 'Compilation of Written Submissions and Oral Statements', Prepared by the Secretariat, MTN.GNG/NG11/W/12/Add.1 (21 October 1987) 3.

[13] Paris Convention (1967), Article 28; Berne Convention (1971), Article 33. The clauses were inserted in 1967: see WIPO, 'Records of the Intellectual Property Conference of Stockholm, June 11 to July 14, 1967', 1060–2, 1074–5, 1218. The 1948 Brussels Act of the Berne Convention provided for compulsory reference to the International Court.

[14] Uruguay Round Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, 'Existence, Scope and Form of Generally Internationally Accepted and Applied Standards/Norms for the Protection of Intellectual Property', Note Prepared by the International Bureau of WIPO, MTN.GNG/NG11/W/24/Rev.1.

> In fact, in the intellectual property field, no case has ever been referred to the International Court. In any case, judgments of the Court never condemn either party; they simply pronounce on the law, leaving the States to make of the judgment what they will.[15]

There were also problems of non-appearance in proceedings before the International Court.[16]

The lack of litigation under the WIPO conventions was partly a product of their membership and content. Berne had fewer parties than GATT in 1988, and the United States was not one of them.[17] Many developing countries were not parties to Paris or Berne or were only bound by old versions.[18] Paris addresses relatively few substantive aspects of patent protection. Paris and Berne generally leave the question of remedies for infringement to domestic law.[19] These differences collectively account for most TRIPS disputes. There may also have been a practice to tolerate noncompliance.[20] The United States, later the most active TRIPS complainant, did not establish the reform of foreign countries' intellectual property practices as a principal trade negotiating objective until 1984.[21]

Multilateral dispute settlement mechanisms began to emerge within the framework of WIPO at the time of the TRIPS negotiations, but none

[15] Claude Masouyé and WIPO, *Guide to the Rome Convention and to the Phonograms Convention* (WIPO, 1981) para. 30.3, quoted in 'Provisions on Enforcement in International Agreements on Intellectual Property Rights', Note by the [GATT] Secretariat, MTN.GNG/NG11/W/18, para. 42. See also Claude Masouyé, *Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)* (WIPO, 1978) para. 33.5. See also Malcolm N Shaw, 'A Practical Look at the International Court of Justice' in Malcolm Evans (ed.), *Remedies in International Law: The Institutional Dilemma* (Hart Publishing, 1998) 23–6; Bruno Simma and others, *The Charter of the United Nations: A Commentary* (Oxford University Press, 2013) 1960–1.

[16] See Matthias Goldmann, 'International Courts and Tribunals, Non-Appearance' in Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2012), Vol. V, 606–12.

[17] The United States acceded to Berne in November 1988, effective from March 1989. Paris and GATT had similar numbers of parties at the time.

[18] Paul Katzenberger and Annette Kur, 'TRIPs and Intellectual Property' in Friedrich-Karl Beier and Gerhard Schricker (eds.), *From GATT to TRIPs: The Agreement on Trade-Related Aspects of Intellectual Property Rights* (VCH, 1996) 10–11.

[19] Bodenhausen (note 10) 91; Masouyé (note 15) para. 16.5.

[20] Stephen M Stewart and Hamish Sandison, *International Copyright and Neighbouring Rights*, 2nd ed. (Butterworths, 1989) 140; Sam Ricketson and Jane C Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (Oxford University Press, 2006) para. 17.82.

[21] 19 USC § 2241, as amended by the Trade and Tariff Act 1984, Pub. L. No. 98–573, § 303(a).

was ever established. The IPIC Treaty provided for dispute settlement involving the recommendation of an assembly, made by consensus, based upon its interpretation of the treaty and a panel report.[22] Concerns regarding the workability of this mechanism were among the reasons cited by the United States for not supporting adoption of the IPIC Treaty in May 1989, and that treaty never entered into force.[23] In September 1989, the governing bodies of WIPO launched a process for a treaty on the settlement of disputes between States in the field of intellectual property, but with instructions that neither panels nor assemblies could impose sanctions or authorize retaliatory measures.[24] A proposal was made in the TRIPS negotiations in 1990 to link the proposed WIPO mechanism to the GATT dispute settlement system in a two-tier process: a WIPO panel would rule on whether an intellectual property standard had been applied, and a GATT panel would only determine whether a failure had trade-related effects, which could lead to trade sanctions.[25] This two-tier idea gained no traction but, even after the TRIPS negotiations ended, draft provisions for a WIPO Treaty on the Settlement of Disputes between States in the Field of Intellectual Property were prepared and revised from 1993 to 1996.[26] They built on the model of GATT procedures with consultation and panel stages but, unlike the IPIC Treaty, they excluded any role for the treaty assembly in making

[22] IPIC Treaty, Article 14. WIPO informed the TRIPS negotiating group of this development: see 'Basic Principles of the Main Multilateral Treaties in the Field of Intellectual Property', Paper Prepared by the International Bureau of the World Intellectual Property Organization, MTN.GNG/NG11/W/34, 4.

[23] WIPO, 'Records of the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits, Washington 1989', para. 1226. The other reasons concerned compulsory licensing and the duration of protection. Cf. WIPO Committee of experts on intellectual property in respect of integrated circuits, 'Draft Article 8bis', Proposal by the Delegation of the United States of America, IPIC/CE/IV/6. See further Abbott (note 6) 705.

[24] WIPO Governing Bodies, 'Program and Budget of WIPO for the 1990–1991 Biennium', AB/XX/2, Annex A, Item PRG.02(3) and AB/XX/20, quoted in WO/GA/XXI/2, para. 5.52. WIPO informed the TRIPS negotiating group of this initiative: see Meeting of Negotiating Group of 30 October–2 November 1989, Note by the Secretariat, MTN.GNG/NG11/16, para. 73; and Meeting of Negotiating Group of 11, 12 and 14 December 1989, Note by the Secretariat, MTN.GNG/NG11/17, para. 14.

[25] Communication from Chile, MTN.GNG/NG11/W/61 (22 January 1990), discussed in Meeting of Negotiating Group of 5–6 January 1990, Note by the Secretariat, MTN.GNG/NG11/18, paras. 6–12.

[26] WIPO General Assembly, 'Proposed Treaty on the Settlement of Disputes between States in the Field of Intellectual Property', WO/GA/XXI/2 (30 April 1997) 1–2. See also Cottier (note 8) 100.

recommendations. The United States indicated that it would not adhere to the proposed WIPO Treaty if it were concluded because the entry into force of TRIPS and the DSU rendered a WIPO mechanism unnecessary.[27] The matter remained under discussion in WIPO until Dr Bogsch ceased to be director general of that organization. The relationship of the proposed WIPO mechanism to the WTO dispute settlement system was never resolved.[28]

A WIPO dispute settlement mechanism could not have authorized trade sanctions that require the suspension of GATT concessions and obligations. The objective of creating such a remedy for non-compliance with intellectual property standards was spelt out in the United States' first detailed proposal in the TRIPS negotiations in 1987.[29] The United States had effectively used the threat and application of increased tariffs under unilateral procedures to obtain changes in foreign intellectual property laws and practices. Not surprisingly, two major targets of those measures, Brazil and South Korea, were those most in favour of a rapid conclusion of the proposed WIPO Treaty,[30] but its terms were never finalized.

The mechanisms provided by the WIPO conventions to settle intellectual property disputes between governments did not function prior to TRIPS and they do not function today.[31] The conclusion of TRIPS was designed to provide the type of dispute settlement mechanism lacking in the multilateral intellectual property framework.

### *1.2.2 Tensions regarding unilateral redress*

The TRIPS preamble's emphasis on 'the importance of reducing tensions by reaching strengthened commitments to resolve disputes on

[27] WIPO General Assembly, 'Report Adopted by the General Assembly', WO/GA/XXI/13 (1 October 1997) para. 168.

[28] Karen D Lee and Silke von Lewinski, 'The Settlement of International Disputes in the Field of Intellectual Property' in Beier and Schricker (eds.) (note 18) 278–328: 314–16.

[29] Suggestion by the United States for Achieving the Negotiating Objective (note 1) 4. See also Guidelines and Objectives Proposed by the European Community for the Negotiations on Trade Related Aspects of Substantive Standards of Intellectual Property Rights, MTN.GNG/NG11/W/26 (7 July 1988) 13.

[30] WIPO General Assembly, 'Report adopted by the General Assembly' (note 27) paras. 173 and 178.

[31] The WIPO Arbitration and Mediation Center was established in 1994 for disputes between private parties. Among other things, it provides domain name dispute resolution services.

trade-related intellectual property issues through multilateral procedures' reflects the negotiating objective of many parties, both developed and developing, to exclude unilateral redress in this area.[32] The 'tensions' principally referred to actions by the United States government under Section 301 of its Trade Act of 1974, as amended, but the European Community (as it then was) also operated investigative procedures under its New Commercial Policy Instrument.[33] These procedures could lead to bilateral agreements with target country governments but decisions were taken by the US or EC authorities alone, hence they can fairly be described as 'unilateral'. There was little incentive for developing countries to agree to higher standards of intellectual property protection in TRIPS if they remained exposed to unilateral action under these procedures.[34] Even if TRIPS were to link intellectual property to trade sanctions, the opportunity to defend a matter in a multilateral proceeding was at least preferable to facing unilateral pressure from a powerful trading partner.[35]

The following section surveys the actions that were conducted under these domestic procedures prior to the conclusion of TRIPS. It illustrates how trade sanctions and intellectual property rights were linked and also provides a benchmark to assess later whether TRIPS and the DSU have succeeded in reducing tensions.

#### 1.2.2.1 Section 301 of the US Trade Act of 1974 and other measures

Section 301 of the Trade Act of 1974[36] provides for action by the US government regarding, among other things, inadequate protection and

[32] Suggestion by Japan for Achieving the Negotiating Objective (note 1) 4; Statement by Thailand at the Meeting of 12–14 September 1988, MTN.GNG/NG11/W/27, 2; Submission from the European Communities, MTN.GNG/NG11/W/49, 5–6; Submission by Austria, MTN.GNG/NG11/W/55, 7; 'Dispute Settlement', Communication from the Nordic Countries, MTN.GNG/NG11/W/59, 2; and the draft texts at note 143. See also Carlos M Correa, *Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options* (Zed Books, Third World Network, 2000) 11.

[33] The tensions could also refer to the policies and practices in other countries to which the US decisions were directed: see Meeting of Negotiating Group of 14–16 May 1990, Note by the Secretariat, MTN.GNG/NG11/21, para. 29.

[34] Hartridge and Subramanian (note 8) 909; John Croome, *Reshaping the World Trading System: A History of the Uruguay Round* (DIANE Publishing, 1995) 134.

[35] Cottier (note 1) 389; Ana María Pacón, 'What Will TRIPs Do for Developing Countries?' in Beier and Schricker (eds.) (note 18) 329–56: 352.

[36] Trade Act of 1974, Pub. L. No. 93–618, as amended, Title III: Relief from Unfair Trade Practices, Chapter 1: Enforcement of United States rights under trade agreements and

ineffective enforcement of US-owned intellectual property rights in foreign countries. Section 301 authorizes the US president to withdraw benefits under trade agreements and to impose increased duties or other import restrictions on goods and services from foreign countries that engage in acts, policies or practices that have an adverse impact on US commercial interests. Section 301 investigations can be initiated following a petition from a private group or on the initiative of the United States Trade Representative (USTR), and USTR used the procedure as a threat in negotiations to remove foreign trade barriers.[37] While in practice increased tariffs were rare, they could be substantial when they were actually imposed.[38] Outside the United States, Section 301 was universally condemned.[39]

Section 301 can be used to address foreign trade barriers not only when they breach a trade agreement but also when USTR considers that a practice is 'unreasonable' and burdens or restricts US commerce.[40] That is not a multilaterally agreed standard. The US Trade and Tariff Act of 1984 introduced examples of unreasonable practices that included the denial of fair and equitable 'provision of adequate and effective protection of intellectual property rights'.[41] USTR began to address matters concerning foreign intellectual property protection on this basis from 1985 and initiated Section 301 investigations into the laws and practices of Brazil,[42] South

response to foreign trade practices, 19 USC § 2411 *et seq.* All sections in that chapter are referred to collectively as 'Section 301'.

[37] The role of private groups in the TRIPS negotiations is presented in Susan K Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* (Cambridge University Press, 2003). Regarding unilateral pressures in the TRIPS negotiations, see Peter Drahos and John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* (Earthscan, 2002) 88–107; Carolyn Deere, *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries* (Oxford University Press, 2009) 48–56.

[38] Alan O Sykes, 'Constructive Unilateral Threats in International Commercial Relations: The Limited Case for Section 301', *Law and Policy in International Business*, 23 (1992) 263–330: 268 and Appendix.

[39] Jagdish Bhagwati, 'Aggressive Unilateralism: An Overview' in Jagdish N Bhagwati and Hugh T Patrick (eds.), *Aggressive Unilateralism: America's 301 Trade Policy and the World Trading System* (University of Michigan Press, 1990) 1.

[40] 19 USC § 2411(b)(1).

[41] 19 USC § 2411(e) as amended by Trade and Tariff Act of 1984, Section 304(f)(2).

[42] Docket 301–49, Brazil informatics policy: 50 Fed. Reg. 37608 (16 September 1985); Docket 301–61, Brazil pharmaceutical patents, upon petition of the PMA: 52 Fed. Reg. 28223 (28 July 1987).