UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT (DS176)

ORAL STATEMENT OF THE UNITED STATES FIRST MEETING OF THE PANEL JANUARY 24 - 25, 2001

1. Thank you, Mr. Chairman and members of the Panel. The United States appreciates this opportunity to present its views regarding the issues in this dispute. Again for the record, my name is Dan Mullaney. I am Associate General Counsel with the Office of the U.S. Trade Representative in Washington, D.C.

2. This dispute boils down to the issue of whether TRIPs compels a Member to recognize claims of trademark ownership by persons whose ownership claim is based on a confiscation outside that Member's jurisdiction. TRIPs does not do so. TRIPs contains a number of important rights and obligations: for example, it requires that foreign nationals be treated no worse than one's own nationals and no worse than other Members' nationals; it defines the kinds of signs that may constitute a trademark; and it lays out the Members' obligations related to the enforcement of intellectual property rights.

3. What it does not do is dictate who, under a WTO Member's national laws, owns or does not own a particular trademark within the jurisdiction of a Member. That is a decision that the TRIPs Agreement, like the Paris Convention, leaves to the discretion of each Member.

4. We agree with the comments of the EC this morning that the territoriality and independence of trademarks is indeed the starting point: it is the national laws of each Member that determine the conditions for the filing and registration of trademarks and that determine who is the owner of the trademark. From there, one examines the extent to which the disciplines of TRIPs and the Paris Convention apply to the national laws. It is precisely our point that TRIPs and the Paris Convention do not address the threshold issue of determining ownership in trademarks, trade names or commercial names (subject of course to specific disciplines, such as national treatment and MFN).

5. This fact is particularly obvious in the case of confiscations of property outside a Member's jurisdiction. There is nothing in the TRIPs Agreement that takes away the sovereign right of a Member to decide that a person who traces his or her purported ownership of a trademark to a confiscation is <u>not</u> the owner of that trademark in the jurisdiction of that Member. This is an important point, because, as I hope the first written submission of the United States made clear, there is a long-standing legal principle in the United States – and in much of the world, including the member States of the European Communities – that a foreign government might be able to confiscate assets located within its jurisdiction, but it cannot, by virtue of that confiscation, assert any ownership rights over assets located outside of its jurisdiction. This is specifically true of trademarks: the confiscation of a company's assets in one country does not

give the government of that country the rights to trademarks outside of that country. Whether a country recognizes the ownership rights of the confiscating entity to trademarks in that country is a matter of domestic law.

6. If it had been the intention of the TRIPs negotiators to supplant this recognized principle with a new principle that Members are no longer free to determine whether they will recognize the ownership of confiscating entities, that intention would have been clearly expressed in the TRIPs Agreement. There is no such explicit or implicit text in TRIPs because that is neither the intent nor the effect of the TRIPs Agreement.

7. Given that the TRIPs Agreement does not dictate national laws concerning who is the owner of the trademark, and given the well-established principle that Members generally do not recognize the ownership of confiscating entities in trademarks used in connection with the confiscated assets, it is hard to see how section 211 can be inconsistent with TRIPs. Section 211 simply reflects the principle that the United States will not recognize confiscating entities or their successors as owners of the U.S. trademarks used in connection with the confiscated assets. In light of the long history of the principle of non-recognition, this should surprise no one.

8. Let's look at section 211. It is made up of three parts. The first part, section 211(a)(1), simply says that the general license for trademark registrations and renewals under the U.S. Treasury Department's Office of Foreign Assets Control, or "OFAC", is not available to register or renew trademarks that were used in connection with assets confiscated in Cuba, unless the original owner consents (although it is available for other trademarks in which Cuban nationals have an interest). This general license is, in effect, a standing authorization that permits the registration or renewal of trademarks in which the Cuban Government or Cuban nationals have an interest. A general license is distinct, under OFAC regulations, from a "specific license", in which a person applies to OFAC and receives a specific authorization to register or renew a trademark.

9. Under the second and third parts of section 211, U.S. courts will not recognize any assertion of rights in a trademark, trade name or commercial name by a person who traces his or her purported ownership of those rights to a Cuban confiscation, absent the consent of the original owner of the confiscated asset. These two parts of section 211 are similar, and deal with the two situations in which a person might assert rights in a trademark under U.S. law: section 211(a)(2) is directed at trademark registrants and those who assert trademark rights purely through use (that is, under common law, without registration). Section 211(b) is directed at persons who base their U.S. trademark registration on a foreign application or registration. This would cover, for instance, cases in which a confiscating entity in Cuba registers the trademark used in connection with the confiscated assets in Cuba – that is, registers the trademark in Cuba – and then uses that Cuban trademark registration as a basis for a U.S. registration of the same trademark.

10. In either of these situations, section 211 instructs U.S. courts not to recognize any ownership of the confiscating entity or its successors in interest in the U.S. trademark. This is not inconsistent with TRIPs, because nothing in TRIPs requires the United States to give ownership rights in trademarks to such entities.

11. None of the TRIPs or Paris Convention articles cited by the EC in its first written submission says anything to the contrary. I will now discuss how each of these articles relates to section 211.

Section 211(a)(1)

12. Let me start with the first part of section 211 – section 211(a)(1). The EC alleges that not making an OFAC general licence available to register or renew trademarks that are the same as or similar to trademarks used in connection with confiscated assets – without the consent of the original owner of those assets – violates Paris Convention Article 6 *quinquies* A(1) (incorporated into TRIPs through TRIPs Article 2.1) and TRIPs Article 15.1.

13. But neither of these articles requires a Member to accept a trademark registration filed on behalf of a person who is not -- under the Member's laws -- the owner of the trademark. Therefore, even if we assume that section 211(a)(1) blocks the registration of such trademarks – an assumption for which the EC has presented no evidence – it is not inconsistent with TRIPs.

Paris Convention Article 6 *quinquies*

14. The Paris Convention does not specify substantive rules that Members must follow in deciding who the owner of a trademark is. That decision is left to the laws of the Members, subject to the "national treatment" requirement that those laws should not grant greater advantages to a Member's own nationals than it does to other Members' nationals. Members use that discretion, I might add, in numerous respects, setting up detailed rules concerning who the proper owner of the trademark is and providing avenues for persons to challenge another person's claim of ownership of a trademark.

15. With specific reference to the discussions this morning, we note that even the EC acknowledges that trademark registrations are subject to challenge in the EC. Rules are in place in Member states that determine who the actual owner of the trademark is, and therefore whether the registration was proper.

16. Indeed, Article 6 of the Paris Convention specifies that "[t]he conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation."

17. Article 6 *quinquies* provides a limited exception to this rule that domestic laws govern the conditions of filing and registration of trademarks. It says that a "trademark duly registered in the country of origin shall be accepted for filing and protected as is [in the authentic French, *telle quelle*] in the other countries of the Union, subject to the reservations indicated in this Article." The key phrase in this provision is "telle quelle" -- "as is" or "in its original form". (We should emphasize here that the rules of treaty interpretation reflected in the Vienna Convention require an analysis first and foremost of the ordinary meaning of the text of the Agreement, and the text of the Agreement includes the important phrase "telle quelle".) Article 6 *quinquies* is directed at the form of the trademark: in cases where a trademark would normally be ineligible for registration because of its form – for instance, because it contains foreign language terms or proper names -- Members are required to accept and protect such trademarks "as is" or "in their original form" – foreign words and all – if they are duly registered in their country of origin. Article 6 *quinquies* is, therefore, a limited "national treatment plus" exception to the rule that domestic legislation governs the registration of trademarks.

18. Article 6 *quinquies* does not eliminate Members' ability to determine that, with respect to issues other than form, the trademark will not be registered or protected. Article 6 *quinquies* would not require, for instance, that such a trademark duly registered abroad be accepted for filing and protected if an identical trademark is already registered in the name of someone else. It would not require that such a trademark be accepted for filing and protected if the trademark were already well known to be the trademark of someone else, or if another person had established his ownership of the trademark in the United States through use. A contrary interpretation, in addition to being contrary to the overall principle that trademark rights are territorial rights, would read the words "telle quelle", or "as is" out of Article 6 *quinquies*. If these words have any meaning at all – and the customary rules of treaty interpretation require that Article 6 *quinquies* be read in a way that gives meaning to all of its terms – it is that Article 6 *quinquies* is directed at matters of the form of the trademark, and not the ownership of the trademark.

19. We noted that the EC cited with approval the treatise by a respected commentator on the Paris Convention, Professor Bodenhausen, at page 110, which the EC termed a plea "for a comprehensive duty for registration and protection." The EC reads this as an interpretation that Article 6 *quinquies* applies broadly to matters other than form. What the EC neglected to say, however, is that Professor Bodenhausen is very clear on pages 110 and 111 that Article 6 *quinquies* goes to the form of the trademark. We quoted an extensive passage to that effect in our written submission. Indeed, Professor Bodenhausen further elaborates as follows on pages 110 and 111 (U.S. Exhibit 27), which follows an initial discussion of Article 6 *quinquies*:

> This leads to the following conclusions:
> Whenever a trademark is duly registered in the country of origin, the other countries of the Union are *obliged to accept and protect it,* even if, as regards *its*

> *form,* that is, *with regard to the signs of which it is composed,* such trademark does not comply with the requirements of the domestic legislation, *subject* to the additional rules, *particularly the grounds for refusal or invalidation of any mark, considered on its individual merits,* established in the Article. This rule will therefore apply to trademarks consisting of numbers, letters, surnames, geographical names, words written or not written in a certain language or script, and other signs of which the trademark is composed.

And further down on page 111:

> Member States are equally free, regardless of Article 6 *quinquies*, to apply to trademark applications other provision of their domestic law not concerning the signs of which a trademark is composed, such as a requirement of previous use of the mark, or the condition that the applicant must possess an industrial or commercial enterprise.[1]

20. In our view, the text of Article 6 *quinquies* speaks for itself. But we think Professor Bodenhausen's explanation is equally clear, and is entirely inconsistent with the reading of Article 6 *quinquies* advanced by the EC.

21. In sum, Article 6 *quinquies* of the Paris Convention does not prevent a Member from denying registration of a trademark duly registered abroad, where the registrant is not the true owner of the trademark. Section 211(a)(1), therefore, cannot be inconsistent with this Article.

22. Even if Article 6 *quinquies* A(1) were read broadly to take away the authority of Members to determine whether the person seeking the trademark registration and protection is the true owner of the trademark -- which we do not believe it should be -- it is still subject to the reservations in Article 6 *quinquies* B. That article specifically permits a Member to deny or invalidate registrations of trademarks duly registered abroad, when they are contrary to "*ordre public*". If the Article 6 *quinquies* A(1) obligations apply to issues other than the form of the trademark, then the reservations also apply to issues beyond the form of the trademark. In such a case, it is plain that the principle against giving extraterritorial effect to foreign confiscations would put trademark applications filed by confiscating entities squarely within the category of trademarks whose registration and protection are contrary to "*ordre public*."

23. In declining to give extraterritorial effect to foreign confiscations, judges both in the United States and in Europe have justified their decisions with specific reference to "*ordre public*" or its functional common law counterpart. In addition, it is a clear principle of public international

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[1] Italics in original; footnotes omitted, with respect to both quoted passages.

law that a State may not expropriate private assets of nationals of other States in its territory unless several criteria are met, one of which is prompt, adequate and effective compensation.

24. Under these circumstances, where a Member is being asked to give extraterritorial effect to a foreign confiscation, a Member would be entitled to invoke an "*ordre public*" exception with respect to any requirement that might otherwise exist to register and protect all trademarks duly registered abroad. Similarly, a Member would in many cases be able to claim that giving such extraterritorial effect would infringe the rights of third parties, another explicit reservation under Article 6 *quinquies* B.

25. In sum, in no way can it be said that section 211(a)(1) is inconsistent with Article 6 *quinquies* of the Paris Convention.

TRIPS Article 15.1

26. The EC is also wrong to claim that TRIPs Article 15.1 contains an affirmative obligation to register all trademarks regardless of whether a Member considers the registrant to be the true owner of the trademark. Article 15.1 simply describes what subject matter is protectable as a trademark, emphasizing that any sign or combination of signs capable of distinguishing the goods and services of one entity from those of another is "capable of constituting a trademark". This means that Members are limited in their ability to deny registration to a trademark because of the sign or signs of which it is composed, so long as those signs are capable of distinguishing the goods of the trademark owner. That a sign is "capable of constituting a trademark", however, does not create an obligation to accept the registration of that trademark by whomever wants to register it.

27. I do not personally know what was discussed by the TRIPs negotiators with respect to this provision, because I was not there. But the text of the Article is clear, and it is the text that is the starting point in any interpretation of an agreement, under the customary rules of interpretation reflected in the Vienna Convention. Article 15.1 limits the ability of Members to refuse registration of trademarks based solely on the signs of which it is composed. It does not require a Member to register a trademark that does not, under the laws of the Member, belong to the person applying for registration

28. In other words, Article 15.1 might prevent a Member from declaring that particular signs are ineligible to be trademarks. There is nothing in Article 15.1 that prevents a Member from declaring that confiscating entities cannot claim an ownership interest in trademarks associated with a confiscated asset.

29. Section 211(a)(1) has nothing to do with whether certain signs are capable of constituting trademarks; it has only to do with who may assert the rights in such a trademark. It is, therefore, not inconsistent with Article 15.1 of TRIPs.

30. The EC delegate noted this morning, in response to questions on Article 15.1, that the realities of registration in the EC is that, even though one person might register a mark, there may be other "contenders" for the mark, who might, under national laws, succeed in having the registration canceled, and in registering the trademark in the names of the "contenders". This is precisely our point. That there are, in all Members, opportunities to challenge the registration based on the true ownership of the trademark means that a Member is not obliged to register a trademark in the name of a particular person, just because the trademark is made up of signs making it "capable of constituting a trademark" under Article 15.1. Article 15.1 simply does not answer the question of who is the owner of the trademark.

31. Further, Article 15.2 of TRIPs is clear that Article 15.1 does not prevent a Member from denying registration of a trademark on grounds other than its form, provided that those grounds do not derogate from the provisions of the Paris Convention. As I have already stated, the Paris Convention does not dictate national laws on the ownership of trademarks, so any denial of a trademark registration on grounds of lack of ownership does not derogate from the provisions of the Paris Convention.

32. Paris Convention Article 6 *quinquies* and TRIPs Article 15.1 are the only two articles that the EC alleges are violated by section 211(a)(1): both of these articles limit the ability of Members to reject trademark registrations based on deficiencies in the form of the trademark. Neither imposes any limits on the ability of Members to reject registrations because the registrant is not the true owner of the trademark.

33. Section 211(a)(1) is, therefore, not inconsistent with either of these articles.

Sections 211(a)(2) and 211 (b)

34. The second and third parts of section 211 – sections 211(a)(2) and 211(b) – present two sides of the same coin, that is, purported U.S. trademark rights asserted based on use, on the one hand, and purported U.S. trademark rights asserted based on foreign trademark registrations, on the other. For this reason, and because the EC alleges the same TRIPs inconsistencies with respect to each, I will discuss these two sections together.

35. The EC alleges that these two section 211 provisions are inconsistent with Articles 16.1 and 42 of TRIPs, Articles 6 *bis* and 8 of the Paris Convention, as well as the national treatment provisions of TRIPs and the Paris Convention and the MFN provision of TRIPs. I will address section 211(a)(2) and 211(b)'s consistency with each of these articles in turn.

TRIPs Article 16.1

36. TRIPs Article 16.1 requires that Members provide owners of registered trademarks with certain rights, including the exclusive right to prevent third parties not having the owner's consent from using the trademark under certain circumstances. Nowhere does it define who the "owner" of the registered trademark is. But once the "owner" of the registered trademark is identified – a decision that is made under the Member's national laws – Article 16.1 requires Members to give that owner certain rights.

37. Sections 211(a)(2) and 211(b) are not inconsistent with Article 16.1 because they do not deprive owners of registered trademarks of their exclusive rights. Rather, they reflect the principle under U.S. law that a person who traces his purported U.S. trademark "right" to a confiscation of assets abroad is not the true owner of the U.S. trademark right. Therefore, that person is not in a position to assert Article 16.1 ownership rights.

38. Sections 211(a)(2) and 211(b) also do not deny access to the U.S. court system. Any person who believes that he or she is the owner of a registered trademark and wishes to enforce his or her rights to exclude third parties from using the trademark is given full access to the U.S. court system to do so. If that person is found to be the true owner of the registered trademark, his or her rights will be enforced. If that person is found not to be the true owner – for instance, because that person claims a right to the trademark by virtue of a foreign confiscation, or because another person has prior rights based on use – he or she will not be able to enforce rights in the trademark. This is not a denial of rights or of access to courts with respect to the owner of the trademark; it is the process by which ownership rights in the trademark are determined. Article 16.1 requires nothing more than this.

TRIPs Article 42

39. Article 42 of TRIPs requires WTO Members to make civil judicial procedures available for the intellectual property rights that are covered by the Agreement. As we have discussed here today and in our written submission, the EC cites no TRIPs provision that requires the United States to recognize the ownership of confiscating entities and their successors in interest in U.S. trademarks. Consequently, section 211 does not contravene any TRIPs right. Article 42 does not require WTO Members to provide claimants with procedures to enforce rights that do not exist. Sections 211(a)(2) and 211(b) are not, therefore, inconsistent with Article 42.

40. In addition, there can be no serious question that the United States makes civil judicial procedures available to enforce intellectual property rights. As I just mentioned with respect to Article 16.1, sections 211(a)(2) and 211(b) do not affect the availability of judicial procedures to any party asserting a right to a trademark. To the contrary, under section 211, there are a number

of issues that have to be decided by the U.S. court: whether assets were confiscated, whether the trademark is the same as or substantially similar to a trademark used in connection with those assets, and whether compensation was paid, among other issues.

41. For both of these reasons, it simply cannot be maintained that sections 211(a)(2) and 211(b) are inconsistent with TRIPs Article 42.

Paris Convention Article 6 *bis*

42. Under Article 6 *bis* of the Paris Convention, the United States, like all Members, undertakes to refuse or cancel, and prohibit the use of, a trademark that is confusingly similar to a trademark that the United States considers to be well known in the United States "as being already the mark of" another person. This article does not require the United States to protect trademarks that do not belong to – that is, are not "the mark of" – the confiscating entity or its successor in interest. Sections 211(a)(2) and 211(b) reflect that the United States does not recognize the ownership of confiscating entities or their successors in trademarks that are similar or identical to trademarks used in connection with confiscated assets. Not protecting the purported rights of confiscating entities in these trademarks is, therefore, consistent with Paris Convention Article 6 *bis*.

Paris Convention Article 8

43. Under Article 8 of the Paris Convention, Members have to offer some protection to trade names, without the requirement of filing or registration, and regardless of whether they form part of a trademark. Article 8 does not impose any requirements on the scope of this protection. Further, Article 8 does not prevent the United States from deciding that a person seeking the protection of a particular trade name is not the owner of that trade name. As discussed with respect to the other articles in this dispute, sections 211(a)(2) and 211(b) provide that persons who do not own a trade name cannot enforce any rights with respect to that trade name. There is nothing in these provisions that is inconsistent with Article 8.

National Treatment Provisions of TRIPS and the Paris Convention

44. Sections 211(a)(2) and 211(b) are not inconsistent with the national treatment provisions of TRIPs and the Paris Convention. Those provisions require that nationals of other Members be accorded treatment that is no less favorable than that accorded to a Member's own nationals. By its own explicit terms, section 211(b) applies, not only to a confiscating entity in Cuba, but to any person, whether U.S. or not who succeeds to the interest of that confiscating entity. This means that

- If the confiscating entity transfers its interest in the trademark to a Cuban national, that Cuban national will not be able to enforce the trademark in the United States.

- If the confiscating entity transfers its interest in the trademark to a French national, that French national will not be able to enforce that trademark in the United States.

- If the confiscating entity transfers its interest in the trademark to a U.S. national, that U.S. national will not be able to enforce that trademark in the United States.

The United States fails to see how this provision in any way accords less favorable treatment to non-U.S. nationals than it does to U.S. nationals.

45. Whereas section 211(b) explicitly states that it applies to any successor in interest to the confiscating entity, section 211(a)(2) applies to successors in interest to the confiscating entity that are nationals of "any foreign country". This does not mean, however, that U.S. nationals can become successors in interest to a Cuban confiscating entity and enforce a trademark that is substantially similar to a trademark used in connection with the confiscated asset. To the contrary, U.S. nationals, unlike non-U.S. nationals, cannot even take the first step of becoming a successor in interest without getting a specific license from OFAC to do so. OFAC has never granted such a licence.

46. Even if a U.S. national were somehow able to find itself in a position to assert alleged rights in trademarks used in connection with confiscated assets, he or she would have to convince a U.S. court that his or her rights should be enforced, in spite of the principle against recognition of foreign confiscations and in spite of the intent of section 211.

47. In sum, neither section 211(a)(2) nor section 211(b) gives non-U.S. nationals less favorable treatment than U.S. nationals; these sections are, therefore, not inconsistent with the TRIPs and Paris Convention national treatment provisions.

Most Favored Nation Provision of TRIPs

48. Article 4 of TRIPs – the most favored nation provision – requires that any advantage, favor, privilege or immunity granted to the nationals of one Member be accorded to the nationals of all Members. Neither section 211(a)(2) nor section 211(b) is inconsistent with this requirement. These sections are aimed at all nationals, whether Cuban or not, whose claim to a particular trademark, trade name, or commercial name is based on an uncompensated confiscation in Cuba. The government of Cuba itself, as the confiscating entity, is of course unable to assert U.S. ownership rights in trademarks that are the same as or substantially similar to trademarks used in connection with the assets it confiscated. In addition, nationals of Cuba, who could have

obtained trademark rights connected with confiscated assets in Cuba only by virtue of the confiscation, are unable to assert U.S. ownership rights in such trademark rights.

49. If sections 211(a)(2) and 211(b) had stopped here, this might be a different case. They do not stop here, however. They specifically provide that any person, of whatever nationality, whether Cuban or not, who is a successor in interest to the above persons cannot be recognized as an owner of the trademark in the United States. This is not a case in which the United States will not enforce a trademark on behalf of a Cuban national, but will enforce it on behalf of a non-Cuban national. Under section 211, the United States will not recognize the trademark ownership of anyone who traces their ownership to an confiscation in Cuba. In this respect, a Cuban national has the same rights as, for instance, a French national. Further, as we described in detail in our written submission, the principle that the United States will not give extraterritorial effect to foreign confiscations is a principle that applies equally to all countries, and is not limited to confiscations in Cuba.

50. Consequently, sections 211(a)(2) and 211(b) are not inconsistent with Article 4 of the TRIPs Agreement.

Conclusion

51. In sum, section 211 is not inconsistent with any of the articles cited by the EC in their written submission or in their oral statement this morning. We respectfully ask that this Panel reject the EC's claims in their entirety.

52. This concludes our oral statement this morning. Thank you for your attention. We look forward to responding to any questions that the Panel or the EC delegates might have.

UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT (DS176)

CLOSING STATEMENT OF THE UNITED STATES FIRST MEETING OF THE PANEL JANUARY 24, 2001

1. I want to thank you, Mr. Chairman and members of the Panel, for your attention and close questioning during this meeting. I will not repeat all of the points that we have made today and in our first written submission. In closing, I do, however, want to emphasize two points.

2. First, it is simply untrue to claim, as the EC has today, that section 211 has no relation whatsoever to the ownership of a trademark, trade name, or commercial name, and no relation whatsoever with the recognized principle against the recognition of foreign confiscations with respect to assets in the United States. Section 211 is a direct reflection of this principle, and is very clear that confiscating entities and their successors cannot assert ownership rights in trademarks, trade names and commercial names used in connection with the assets that were confiscated. The EC is simply wrong in stating that section 211 curtails the exercise of legally undisputed ownership rights in relation to assets in the United States. Far from being "legally undisputed ownership rights", the United States does not recognize any claim to such ownership rights by the confiscating entity or its successors.

3. Further, the principle against giving effect to foreign confiscations is not purely a question of the "allocation" of ownership, as the EC expressed it. Of course, in particular judicial proceedings, the issue is generally presented in the context of a dispute between two parties who claim ownership of a trademark or other asset. That is the nature of court cases. But consider the articulation of the principle by these courts, summarized in our first written submission (at paragraphs 9 and 50):

> Foreign confiscations are "contrary to our public policy and shocking to our sense of justice and equity" and will not be given effect in the United States.
>
> It has been "settled by a long line of cases that our courts will not give extra-territorial effect to a confiscatory decree of a foreign State."
>
> Foreign confiscation of assets is "contrary to our public policy" and will not be given extraterritorial effect by U.S. courts.
>
> To recognize foreign confiscations would "be to give [the foreign confiscation decree] extraterritorial effect and thereby emasculate the public policy of the forum against confiscation".

These statements of principle do not reflect a mere neutral "allocation" of ownership rights.

4. Second, it is apparent from our discussion today that the EC delegation does not like section 211. I think we can safely stipulate to that. But the issue is not whether the EC likes or does not like section 211. The issue before this Panel is whether, on its face, section 211 is inconsistent with any of the TRIPs or Paris Convention provisions cited by the EC in its request for establishment of a panel. I should specify that the issue is consistency with these provisions as written, not as the EC delegation wishes they were written. Section 211 is not inconsistent with any of the TRIPs or Paris Convention provisions cited by the EC.

5. We thank you once again for your attention and for your hard work in this important matter.