

**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.