

COMMISSION COMMUNICATION

of 5 November 1998

on the Commission findings concerning the grant under the Taiwan trademark law of priority rights deriving from Community trademark applications (Article 29(5) of Council Regulation (EC) No 40/94 on the Community trademark)

(98/C 351/03)

On the basis of Commission Communication 96/C 335/03 ⁽¹⁾, Taiwanese nationals may become proprietors of Community trademarks under Article 5(1)(d) of Council Regulation (EC) No 40/94 on the Community trademark.

In the same communication, however, the Commission declared that through the lack of an agreement between the Community and Taiwan on the subject matter, Taiwanese nationals applying for Community trademark may not claim priority on the basis of a first filing of the same mark in Taiwan.

Article 29(5) of Regulation No 40/94 ⁽²⁾, as amended by Council Regulation (EC) No 3288/94 ⁽³⁾, provides that a person who has duly filed an application for trademark in a State which is not a party to the Paris Convention or the Agreement establishing the World Trade Organisation, may only claim the priority date of that filing for the purpose of the filing of that mark as a Community trademark, in so far as the State concerned accepts Community trademark applications as a first filing for the purpose of the claiming of priority in relation to the filing of the same mark at its own Trademark Office.

Since the publication of the Commission Communication, as referred to above, the Commission and Taiwan have discussed possible solutions in order to find an agreement on the issue of priority.

The delegations from Taiwan and the European Commission reached the following agreement on the issue of priority.

Registration of trademarks

The National Bureau of Standards of Taiwan shall accept, pursuant to Article 4 of the Taiwan Trademark law, priority claims deriving from a first application for the registration of a European Communities' trademark effected with the Office for Harmonisation in the Internal Market (trademarks and designs).

The Office for Harmonisation shall accept, pursuant to Article 29(5) of Council Regulation No 40/94 on the European Communities' trademark, priority claims deriving from a first application for the registration of a trademark effected with the national Bureau of Standards of Taiwan.

For the purpose of the implementation of the preceding provisions, both parties refer to Article 4 of the Paris Convention for the Protection of Industrial Property.'

These conclusions were included in the Record of Negotiations between the European Commission and the Separate Customs territory of Taiwan, Penghu and Matsu on WTO Accession of 23 July 1998.

The parties agreed that the agreement shall take effect as from 1 August 1998.

⁽¹⁾ OJ C 335, 9.11.1996, p. 3.

⁽²⁾ OJ L 11, 14.1.1994, p. 1.

⁽³⁾ OJ L 349, 31.12.1994, p. 84.