

REVIEW OF LEGISLATION

LATVIA

By means of a communication from the Permanent Mission of the Republic of Latvia, dated 13 October 1999, the Secretariat has received a copy of the following answers to questions posed by Japan and the United States.

I. REPLIES FROM LATVIA TO QUESTIONS POSED BY JAPAN¹

A. LAW ON COPYRIGHT AND NEIGHBOURING RIGHTS

1. Please explain how protection is provided for works, phonograms, performances and broadcasts of other WTO Members under the Law on Copyright and Neighbouring Rights of Latvia (hereinafter referred to as the "Copyright and Neighbouring Rights Law").

Please also describe the provisions of the Copyright and Neighbouring Rights Law which provide for national treatment and most-favoured-nation treatment as required by Articles 3 and 4 of the TRIPS Agreement and by Article 9.1 of the TRIPS Agreement, which incorporates Article 5(1) of the Berne Convention.

Concerning the protection of works, phonograms, performances and broadcasts of other WTO Members, paragraph 4 of Article 49 of the Copyright and Neighbouring Rights Law states that:

"The rights specified in this Section are recognised as to foreign natural and legal persons who have made the first performance, production, fixation of sounds broadcast, transmission by wire outside the territory of the Republic of Latvia in accordance with the international agreements of the Republic of Latvia."

With respect to provisions of the Copyright and Neighbouring Rights Law regarding national treatment and most-favoured-nation treatment, see the answer to question 2 below.

¹ Document IP/C/W/150.

2. Please explain exceptions to or exemptions from national treatment and most-favoured-nation treatment under the Copyright and Neighbouring Rights Law, if any, as permitted in Articles 3 and 4 of the TRIPS Agreement.

The Copyright and Neighbouring Rights Law does not contain any special provisions with respect to exceptions or exemptions from national treatment and most-favoured-nation treatment. However Article 58 states that:

"If an international agreement which has been entered into by the Republic of Latvia includes provisions which are different from the norms in this Law, the provisions of the international agreement prevail."

3. With regard to Article 4.1 of the Copyright and Neighbouring Rights Law, which stipulates the protection of "computer programs", please explain whether such protection covers computer programs in both source code and object code, as required by Article 10.1 of the TRIPS Agreement.

Yes, the protection for computer programs set out in Article 4.1 of the Copyright and Neighbouring Rights Law covers computer programs in both source code and object code, as required by Article 10.1 of the Agreement.

4. Please explain whether "databases and other compilations" under Article 5 of the Copyright and Neighbouring Rights Law include compilations of data in machine-readable form. Please also explain how the Copyright and Neighbouring Rights Law complies with Article 10.2 of the TRIPS Agreement in this respect.

Yes, "databases and other compilations" under Article 5 of the Copyright and Neighbouring Rights Law include compilations of data in machine readable form. In this respect, new amendments have been prepared in the text of the Law in order to make these provisions clearer in relation to Article 10.2 of the TRIPS Agreement.

B. LAW ON TRADEMARKS

5. Article 23.2 of the TRIPS Agreement prohibits the "registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits." Please explain how the Law on Trademarks of Latvia (hereinafter referred to as the "Trademark Law") complies with Article 23.2 of the TRIPS Agreement, since we have not been able to find any provisions of the Trademark Law that correspond to that Article.

Otherwise, should we understand that such prohibition is secured by Article 22 of the Trademark Law, which stipulates that "If an international agreement, to which the Republic of Latvia is a party, provides for provisions which differ from those in this Law, the provisions of the international agreement shall apply"?

The provisions of Article 23.2 of the TRIPS Agreement to their full extent are incorporated in the new Law on Trademarks and Indications of Geographical Origin, which entered into force on 15 July 1999. Paragraph 1 and subparagraph 10 of Article 6 of the said law provide that:

"The following signs shall not be registered as trademarks (if they have been registered, these registrations may be declared invalid pursuant to the provisions of this Law):

with respect to wines - those which contain or consist of an indication of geographical origin identifying wines of particular origin, or - with respect to spirits - which contain or consist of an indication of geographical origin identifying spirits of particular origin, if such is not the genuine place of origin of the wines or spirits for which the trademark registration has been applied for".

It must be noted, that the term "indication of geographical origin" under Article 1 of the Law on Trademarks and Indications of Geographical Origin is defined as:

"a geographic name or other indication or sign used to indicate, directly or indirectly, the geographical origin of goods or services, including indications of the characteristics or features thereof, which are attributable to this origin".

Thus the term "indication of geographical origin" covers the term "geographical indication" used for the purposes of the TRIPS Agreement.

Under the Law on Trademarks of 1993, the provisions of Article 23.2 of the TRIPS Agreement to a great extent are covered by the provisions of Article 2, paragraph 2 which stipulate that:

"[...]Any sign which can be considered as a geographical indication, may only be included in a mark with the stipulation that it will not mislead the public and that its use does not contradict the law and local legal acts".

According to the provisions of Article 7, paragraph 1 and Article 10, paragraph 1, if the trademark falls under the provisions of Article 2, paragraph 2, that constitutes the ground for refusal or invalidation.

In addition, the provisions of Article 23.2 of the TRIPS Agreement may be ensured by virtue of Article 22 of the Law on Trademarks of 1993, as well.

C. PATENT LAW

6. Article 3(4) of the Patent Law of Latvia (hereinafter referred to as the "Patent Law") provides that plant and animal varieties are unpatentable subject-matter. Please explain how Latvia provides protection for plant and animal varieties.

The protection of plant varieties is provided in the Republic of Latvia by the Law on the Protection of Plant Varieties, which entered into force on 3 June 1993. In accordance with the provisions of Article 9, paragraph 3 of the said law, the Latvian State Plant Variety Testing Center is responsible for the registration of plant varieties.

The protection of animal varieties is not provided for in the Republic of Latvia at this time.

7. Article 31(4) of the Patent Law stipulates that "Exclusive rights come into force to their full extent as of the date a patent is granted and expire no later than 20 years from the filing date of the application." On the other hand, Article 33 of the TRIPS Agreement provides that "The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date." Please explain the compatibility of these two provisions.

The term of protection of rights in Latvia shall be 20 years from the filing date of the patent application. It is necessary to take into consideration the beginning of Article 3, paragraph 4, in conjunction with Article 31, paragraphs 6, 7, 8 and Article 45, paragraph 3. Thus the wording of Article 31, paragraph 4, "...to their full extent..." means that only from the date of the grant of the

patent the owner has rights to submit a claim to the court in case of a patent infringement and has the possibility after this date to receive a reasonable compensation from the user of the invention.

II. REPLIES FROM LATVIA TO QUESTIONS POSED BY THE UNITED STATES²

1. With respect to each form of intellectual property right covered by Part II of the TRIPS Agreement and with respect to enforcement, please describe the manner in which the Republic of Latvia has assured that nationals of other WTO Members receive treatment no less favourable than Latvian nationals with regard to matters affecting the availability, acquisition, scope, maintenance and enforcement of such rights.

With regard to matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights, nationals of other WTO Members receive treatment no less favourable than Latvian nationals. Such treatment of nationals of other WTO Members is ensured in Latvia on the basis of international agreements which Latvia has concluded or to which it has adhered (e.g. the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works and the WTO/TRIPS Agreement), as according to Latvia's principles of law the provisions of international agreements have direct effect in Latvia.

These principles are reflected in many laws of Latvia. For example, Article 50 "Priority of international agreements" of the Patent Law says that "if an international agreement signed by the Republic of Latvia contains provisions other than those laid down by this Law, the provisions of the international agreement shall be applicable." The like provisions are included in other Latvian laws on intellectual property rights.

The practice of Latvia's courts testifies as well that the rule of Article 50 is interpreted by courts also as follows: "if this Law does not contain provisions laid down by an international agreement signed by the Republic of Latvia, the provisions of the international agreement shall be applicable."

The nationals of other WTO Members receive treatment no less favourable than Latvian nationals with regard to matters affecting the availability, acquisition, scope, maintenance and enforcement of such rights according to the Criminal Procedure Code, which determines that "in criminal cases justice is administered based on person's equality before the law and court irrespective of their origin, social and material status, race and nationality, sex, education, language, religion, profession, place of residence and other circumstances" as well as the Civil Procedure Law, which determines that "every private person or legal entity has the rights to protection in the court of its own infringed or disputed civil right or interests protected by the Law" as well as providing equal procedural rights for parties.

2. Please describe in detail the manner in which the Republic of Latvia has implemented its obligation to restore protection for copyrights and sound recordings that are still under protection in their country of origin and have not had a full term of protection in the territory of the Republic of Latvia.

The terms of protection for copyrights and sound recordings are determined under the Law on Copyright and Neighbouring Rights (Articles 28-32, 48). The term of protection for copyrights and sound recordings for international bodies are determined under international agreements (Law on Copyright and Neighbouring Rights Article 58).

² Document IP/C/W/151.

3. Are computer programmes protected as literary works under the copyright law of the Republic of Latvia?

Yes, under the copyright law of the Republic of Latvia computer programs are protected as literary works.

4. Article 8 of Latvia's trademark law provides for the rejection of applications for trademark registrations and for cancellation of registered trademarks that are identical with or similar to a well-known trademark. Please describe in detail the manner in which well-known trademarks are protected in the Republic of Latvia against use by unauthorized parties.

Article 4 - "Rights to a Trademark and the Holders of these Rights" - of Latvia's Trademark Law and in particular Article 4(7) includes the following provisions concerning the protection of well-known marks:

"(6) The person in whose name the trademark has been registered is entitled to prohibit other persons from using in the course of trade the following signs:

- 1) any sign which is identical to the trademark in relation to goods or services which are identical to those for which the trademark is registered;
- 2) any sign where, because of its identity to, or similarity to, the trademark and the identity or similarity of the goods or services for which the trademark is registered and the sign is used, there exists a likelihood of confusion on behalf of the relevant consumers, which includes the likelihood of association between the sign and the trademark.

(7) Notwithstanding the provisions of paragraph 6 of this Article, the owner of a trademark, that is **well-known** (within the meaning of Article 8) in Latvia, is entitled to prevent the use, in the course of trade, of any sign which constitutes a reproduction, an imitation, a translation or a transliteration, likely to create confusion, of the well-known trademark, in relation to goods or services, that are identical or similar to those covered by the well-known trademark. The owner of a trademark, that is well-known in Latvia, is entitled to prevent the use, in the course of trade, of a sign which constitutes a reproduction, an imitation, a translation or a transliteration of the well-known trademark, also in relation to goods or services, that are not similar to those covered by the well-known trademark, provided that consumers may perceive the use of such a sign as indicating a connection between these goods or services and the owner of the well-known trademark, and that such use may be detrimental to the interests of the owner of the well-known trademark.

(8) In accordance with the provisions of paragraphs 6 and 7 of this Article the following actions may also be prohibited:

- 1) use (affixing, attachment) of the said signs on the goods or on the packaging thereof;
- 2) offering the goods for sale, or putting them on the market or stocking them for these purposes under the said signs;
- 3) providing services or offering them under the said signs;
- 4) importing or exporting the goods under the said signs;
- 5) using the said signs on business documents and in advertising.

(9) In the application, *mutatis mutandis*, of the provisions of paragraphs 6, 7 and 8 of this Article, the owner of the trademark is also entitled to prohibit other persons from using signs that are intended for purposes other than distinguishing goods or services (marking of goods, indication of the origin of goods or services), if it is proven that the use of such a sign in the absence of appropriate justification gives the impression of connection with this trademark, or

takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the trademark."

The procedure under which the owner of a well-known trademark may protect his rights is set forth by the general rules of Article 27 - "Unlawful Use of a Trademark (Trademark Infringement)" - and Article 28 - "Liability for Unlawful Use of a Trademark" - of the Law, that refer to the protection of well-known trademarks as well.

Article 27 provides, inter alia, that:

"(1) Unlawful use of a trademark shall be construed as an infringement of the exclusive rights of the trademark owner, namely, the use, in the course of trade, of the signs referred to in Article 4, paragraph 6, sub-paragraph 1 or 2 of this Law, or in Article 4, paragraph 7, without the consent of the owner of the trademark, including use of such signs in the ways specified in Article 4, Paragraph 8."

Article 28 provides, inter alia, that:

"(1) Liability for unlawful use of a trademark pursuant to the provisions of Article 27 of this Law shall arise, where the fact of trademark infringement is proved. The burden of proof of the fact of infringement lies with the aggrieved party (the owner of the trademark or the licensee).

(2) The owner of a trademark (or their successor in title) may bring an action in the Regional Court of Riga for unlawful use of the trademark. The licensee is entitled to bring a separate action for unlawful use of the trademark only with the consent of the owner of the trademark. The consent of the owner of the trademark is not necessary if the licensing agreement provides for the right of the licensee to bring a separate action, or in cases, where the owner of the trademark does not bring such an action even though the licensee has invited the owner to do so in writing. Any of the licensees of the respective trademark are entitled to intervene in the action and seek damages that have resulted from unlawful use of the licensed trademark.

(4) If the fact of infringement is proven, and depending upon the degree of fault, the aggrieved party may request the court to make a judgement including one or more of the following measures (sanctions):

- 1) cessation of the unlawful use of the trademark;
- 2) payment of damages arising from the unlawful use of the trademark, including lost profits;
- 3) recovery of court costs, including also the litigation expenses as prescribed by law, and the fees paid to the representative.

(5) The court may, in its judgement, provide for measures to prevent further infringement of the trademark, including imposing the obligation to destroy the goods with the unlawful marking, or to convey those goods at cost price to the owner of the trademark (successor in title) or the licensee if they so agree, or to donate those goods for use for charitable purposes. The court may, upon the request of the owner of the trademark (their successor in title) or the licensee, apply the measures prescribed by law for enforcement of the claim also in those cases when the claim is not of a material character (damages are not claimed).

(6) When determining liability for unlawful use of a trademark, for the purposes of determining the degree of the infringer's fault, the fact of receipt of the warning notice referred to in Article 24, paragraph 3 of this Law may be used as evidence.

(7) In cases where trademark infringement has been done deliberately or with intent to defraud, the persons responsible shall also be called to administrative or criminal liability.

(8) Notwithstanding the provisions of Article 27 and this Article, claims for infringement of registered and unregistered trademarks, including the cases provided for in Article 4, paragraph 9 of this Law, may be based upon the provisions of the laws or other statutory enactments of Latvia pertaining to unfair competition.

(9) A claim for the infringement of a trademark may be brought within three years from the date when the aggrieved party became aware, or should have become aware, of the occurrence of infringement of the mark.

5. Please describe what is envisioned by the limited exception to exclusive patent rights contained in Article 32(1) of Latvia's Patent Law allowing others to use an invention for "non-commercial" (non-profit) purposes and provide specific examples.

Taking into consideration that Latvia's courts have not yet examined any case involving a dispute over the use of an invention for non-commercial (non-profit) purposes and, respectively, have not devised their understanding of the provision of Article 32(1) of Latvia's Patent Law, it may be presumed that this provision mainly refers to a private non-commercial use of a patented product. For example, it may refer to educational purposes, an experimental use by a person who is not a scientific organisation (Article 32(2)), but an individual. The provision may refer as well to a person - individual - who legally obtains a patented product (i.e. the product that has already been put on the market by the owner of the patent for invention, or with his authorisation) and who, thus, has the right to repair it or have it repaired (Article 32(3)).

6. Please describe in detail the manner in which a court in the Republic of Latvia might grant a patent compulsory licence under Article 39 of Latvia's Patent Law, indicating how each of the required circumstances under Article 31 of the TRIPS Agreement is established.

It should be mentioned, first of all, that a patent compulsory license may be granted by court under Article 39 of Latvia's Patent Law only in exceptional cases which are mentioned in the Law, namely, in the cases if a patented product, or an invention, is of vital importance to the welfare of the residents of Latvia or for the interests of the economy or national security of Latvia.

The provisions above are to be considered additional restrictive limitations of "the other use" which are not mentioned in the TRIPS Agreement.

Besides, the Law allows the grant of a patent compulsory licence in the case where a patented invention is of great economic significance while the TRIPS Agreement refers to "an important technical advance of considerable economic significance" (Article 31 (1)(i)).

Article 31 of the TRIPS Agreement provides that the other use "(b) ... may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time."

According to the relevant Article 39(1) of Latvia's Patent Law: "If within four years time from the date a patent is granted [...], the patented invention has not been used or has been insufficiently used in the territory of the Republic of Latvia, any person may appeal to court with a request that the court grant a licence (compulsory licence) to use the patented invention in accordance with the terms

set by court. This provision does not apply in cases when the patent owner is able to substantiate the non-use or inadequate use of the invention."

When regarding a claim for a patent compulsory licence, Latvia's court, besides provisions of the national Patent Law, should take into consideration factors (required circumstances) under Article 31 of the TRIPS Agreement. Such an approach follows from the principles of Latvia's law mentioned in the answer to question 1 under II above.

Since Latvia's courts had no practice in regarding claims under Article 39 of the Patent Law, it may be presumed that in establishing circumstances required under Article 31 of the TRIPS Agreement the courts may, at least, take evidence of the person claiming the grant of a patent compulsory licence and the patent holder, evaluate the opinions of competent authorities (e.g. governmental bodies, research centres and the like).

7. Article 39.3 of the TRIPS Agreement requires that WTO Members protect data submitted to obtain marketing approval for agricultural chemicals and pharmaceutical products against unfair commercial use and against disclosure. Please explain in detail the manner in which the Republic of Latvia provides such protection.

In general, paragraph 1 of Article 7 of the Information Publicity Law states that:

"Information shall be qualified as secret of entrepreneurship, if an institution betraying this information can prejudice to competitiveness of the person submitting it."

In specifics, Article 36 of the Regulations of the Cabinet of Ministers No. 341 of October 5, 1999, the Order of Registration of Plant Protection Chemicals states that:

"The State Service for Plant Protection and the Registration Commission is not allowed to use information on plant protection chemicals, the active substances of plant protection chemicals, and information on plant protection chemicals which contain parasitic and fierce organisms for the benefit of other applicant to registration in the absence of written agreement between the person who initially submitted the information and the that other applicant."

Article 37 of the same Regulations also states that the State Service for Plant Protection and the Registration Commission secure limited availability to the information at their disposal if so requested by the applicant for the registration.

With respect to pharmaceutical products, Article 4 of the Order of the Ministry of Welfare, No.155, the Order of Registration of Pharmaceutical Products states that:

"The State Drug Agency shall secure the confidentiality of the information submitted by the applicant to registration, if the applicant has indicated this fact when submitting the registration application."

8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing the better to determine the reasoning on which the decision is based. Please state, in regard to each court or administrative body with jurisdiction over intellectual property disputes, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.

According to Latvia's laws, all decisions of courts or administrative bodies with jurisdiction over intellectual property disputes must be prepared in written form. The legal authorities that require such written opinions are Latvia's Law on Civil Procedure, Article 193 ("The form and contents of the

decision") and Regulations of the Board of Appeals of the Latvian Patent Office approved by the Minister of Justice, Section 7.9.

9. Under Article 42, parties are to be entitled to substantiate their claims and present relevant evidence. Please describe any limitations under the law of the Republic of Latvia on a party's ability to substantiate a claim or present relevant evidence and cite the legal authority providing such limitation.

Under Section 15 of the Civil Procedure Law:

- each party shall prove the facts it makes reference to as substantiation of its own claim and objection. Claimant shall prove its claim. Defendant shall prove validity of its objections. If the parties to the case have no possibility to receive necessary evidence, the court shall require it on its own after receiving request from the parties.
- the court accepts only evidence with significance for the case.
- the court estimates evidence according to its own conviction, which is substantiated with completely, generally and appropriately proved evidence in as far as to be guided by juridical sense which is based on logic, science recognition and observations acquired in life.
- the court admits only means of proof stated in law.
- no evidence has previously stated force that commits the court.

Under Section 5 of the Criminal Procedure Code:

- evidence in criminal case is established by testimonies of witnesses, victim, marked man, defendant, expert's adjudgement, bodies of evidence, protocols of investigation and court and other documents.
- investigator (depositor of reference), public prosecutor, judge and court according to the procedure stated in this Code can in cases being at their disposal invite any person to cross-examine or require expert adjudgement from it; can require from enterprises, institutions, organisations, officials and other private persons to present material evidence and documents from which the necessary evidence for the case can be acquired; require enterprise, institutions and organisations to make documentary audits.
- marked man, defendant, victim, civil claimant, civil defendant and their representatives as well as any person, enterprise, institution and organisation can also present evidence at their own initiative.
- estimation of evidence is made according to the same principles as in civil process.

10. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

Section 14(d) of the Administrative Offence Code constitutes administrative offences which find expressions as contempt against the court, in particular, in respect to not rendering information, Article 41 is referable which provides that "public authority which does not consider judge's side decision or application of judge or do not take measures in order to prevent law offences mentioned in the above documents as well as do not provide answer in time to the side decision or application shall be fined up to 100Ls" (appr. 170 USD).

Article 272 of the Criminal Law provides criminal liability for not providing requested information and for providing untruthful information to a State institution which is authorised by the Law to require such information.

11. Article 44.2 authorizes WTO Members to except from the authority of courts to enjoin infringements of intellectual property for government use and for third parties' use on behalf of governments, limiting the remedy for infringement to payment of adequate remuneration. Please describe any such limitations on remedies under the laws of the Republic of Latvia and cite the legal authorities providing for those limitations.

The Latvian laws do not contain such special exceptions.

12. Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design and trade secret enforcement for 1998, including the number of cases filed; injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.

Statistical information on cases related to the intellectual property:
(In accordance with the report on civil cases in the first instance in 1998)

Incoming cases	14
Finished cases	10
Resolved cases by judgement	5
Dismissed cases	4
Not resolved cases before 1998	11
Not resolved cases after 1998	15

In 1998 the courts examined eight appeals against decisions of the Board of Appeals of the Latvian Patent Office relating to oppositions to trademark registrations:

	Number of cases examined	Trademarks cancelled
Riga District Court	5	3
Supreme Court	1	2
Supreme Court's Cassation Department	2	2
Total	8	5

13. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for 1998, including the number of raids, prosecutions, convictions and the amount of fines and/or jail terms (including whether the fines were paid and whether the jail term was actually served or was suspended) and any other information establishing that your criminal system operates effectively to deter copyright piracy and trademark counterfeiting.

There is no such collected information available in the Republic of Latvia.
