

REVIEW OF LEGISLATION

Questions Posed by the United States

By means of communications from the Permanent Mission of the United States dated 21 September 2000, the Secretariat has received copies of the following questions from the United States addressed to Chile, Colombia, Egypt, Guatemala and Peru, respectively.

CHILE

A. GENERAL

1. Please describe, in relation to each form of intellectual property covered by the TRIPS Agreement, including plant variety protection, the manner in which national treatment and most favoured nation treatment are provided to nationals of other WTO Members.

B. COPYRIGHT

2. Please explain how Chile's copyright law protects computer programs as literary works and complications of data as required by Article 10 of the TRIPS Agreement and cite to the relevant provisions.

3. Article 11 of the TRIPS Agreement requires that rental rights be provided for computer programs and cinematographic works in most instances and Article 14 requires that rental rights be provided to the producers of phonograms. Please describe the manner in which rental rights are provided right holders in these works and phonograms and cite to the relevant provisions of Chile's copyright law.

C. TRADEMARKS

4. Please explain how Chile's trademark law provides for a presumption of likelihood of confusion, as required by Article 16.1 of the TRIPS Agreement, where an identical mark for identical goods and services is used without authorization on identical goods or services, and cite to the relevant provision.

5. Please explain whether and how Chile's trademark and other laws ensure protection of well-known trademarks and service marks, citing to the relevant provisions of law.

D. GEOGRAPHICAL INDICATIONS

6. Please describe in detail how and under what laws geographical indications are protected in Chile and cite to the relevant provisions of law.

7. Does the law of Chile regarding geographical indications provide for any of the exceptions to protection of geographical indications contained in Article 24 of the TRIPS Agreement, and, if so, please describe the way in which the exception is applied and cite to the relevant provisions of law.

E. INDUSTRIAL DESIGNS

8. Please describe in detail the way in which industrial designs, including textile designs, are protected under Chile's laws and cite to the relevant provisions of law.

F. PATENTS

9. Article 37 of Law 19,039 Establishing the Rules Applicable to Industrial Titles and the Protection of the Industrial Property Rights excludes "discoveries, scientific theories, and mathematical methods" as well as "economic, financial, easily verified trade and taxation systems, methods, principles or plans." Plant and animal varieties are also excluded from patentable subject matter. The patentability of microorganisms, however, is not expressly provided for, and Chile is not a member of the Budapest Convention. Please explain whether inventions in the below-specified categories specified are patentable if they meet the standards of patentability specified in Article 27.1 of the TRIPS Agreement:

- (a) process inventions that consist, in whole or in part, of steps performed by a computer that are directed by a computer program;
- (b) product inventions consisting of elements of a computer-implemented invention including:
 - (i) machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; or
 - (ii) a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program;
- (c) process inventions that facilitate the conduct of business; and
- (d) microorganisms.

10. Please verify that, under Article 37(e) of the Industrial Property Law, a new use of an existing product would be patentable if that new use solved a technical problem that did not previously have an equivalent solution.

11. Under Article 38 of the Industrial Property Law, any invention "contrary to the law, public policy, State security, or morality, or proper practice" is automatically excluded from patentability. Please describe the process by which the Government of Chile determines whether an invention is contrary to law, public policy, State security, morality or proper practice and the criteria used to make those determinations, citing to the relevant provisions of law. Also, please indicate whether a determination that an invention is excluded from patentability under Article 38 is appealable and, if so, to what body would that appeal be made.

12. Article 52 of the Industrial Property Law gives patent owners the right to exclude others from making, marketing, or importing for the purposes of sale. While the right to prevent others from using patented process is given, there is no express product-by-process. Please verify that holders of product patents can prevent the use of their patented products and holders of process patents can prevent, in addition to the use of their processes, the marketing, use and importation of the product produced directly using their patented process, as is required by Article 28 of the TRIPS Agreement.

13. Under Article 52(c) of the Industrial Property Law, "fraudulent" use of the invention is an infringement, except if the invention is used "exclusively for experimental or teaching purposes. Please explain in detail what unauthorized acts Article 52(c) would permit a third party to perform.

14. Article 39 of the Industrial Property Law provides a patent term of 15 years but does not specify whether the term is measured from application or issue. The term of patents not based on foreign applications apparently may not be extended. For applications based on foreign filings, the term is the remainder of the term in the country of origin but is not to exceed 15 years. Please describe in detail, including providing a estimated date of completion, Chile's plans for amending its law to provide a term of protection of at least 20 years measured from the date of filing in Chile, including plans for ensuring that such a patent term is provided all patents in existence in Chile on the date of application, 1 January 2000.

15. Article 51 of the Industrial Property Law provides for the issuance of a compulsory licence for abuse of the patent right. Please describe in detail how Chile implements the safeguards enumerated in Article 31 of the TRIPS Agreement with respect to this type of compulsory licence.

16. Please describe in detail how Chile implements the obligations under Article 34 of the TRIPS Agreement and cite to the relevant provisions of law.

G. LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

17. Please describe how Chile implements the obligations of Section 6, Part II of the TRIPS Agreement and cite to relevant provisions of law.

H. PROTECTION OF UNDISCLOSED INFORMATION

18. Please describe in detail how Chile implements the obligations of Article 39.2 of the TRIPS Agreement and cite to the relevant provisions of law.

19. What measures, as required by Article 42 of the TRIPS Agreement, are taken by judicial authorities in Chile to protect the confidentiality of undisclosed information furnished by a party during legal proceedings to enforce rights in such information, or for other purposes.

20. Please explain in detail how Chile protects against unfair commercial use test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals and cite to the relevant provisions of law.

21. Please explain in detail how Chile protects against disclosure test and other data submitted to obtain marketing approval for pharmaceutical and agricultural chemical products and cite to the relevant provisions of law

I. ENFORCEMENT

22. Please describe in detail what civil actions and what civil remedies are available under Chile's laws to right holders of each kind of intellectual property covered by Part II of the TRIPS Agreement, including plant variety protection, that permit effective action against any act of infringement to prevent infringement and deter further infringement, and cite to the provisions of law providing for those remedies.

23. Please state whether decisions on the merit in court proceedings are provided in writing and if those written opinions are available to the public so that people can become familiar with the law.

24. Please describe what civil provisional measures are available to right holders under Chile's laws, describe the procedures that must be followed and cite the relevant provisions of law.
25. Please state whether judicial authorities have authority to adopt provisional measures *inaudita altera parte*, as required under Article 50.2 of the TRIPS Agreement and under what circumstances that authority will be invoked.
26. Please describe in detail the procedures under Chile's laws, at least with respect to counterfeit trademarked goods and pirated copyrighted works, that allow right holders to request customs authorities not to release goods into free circulations and cite to the relevant provisions of law. Please indicate if the customs authorities have *ex officio* authority to take such action.
27. Please indicate whether border enforcement is available with regard to other forms of intellectual property rights and cite to the relevant provisions of law.
28. Please describe in detail how Chile implements the remaining provisions of section 4 of Part III of the TRIPS Agreement, citing to the relevant provisions of law.
29. Please describe in detail the criminal actions and remedies that are available with respect to counterfeit trademarked goods and pirated copyrighted works and cite to the relevant provisions of law.
30. Please indicate the authorities responsible for criminal actions involving intellectual property rights and indicate whether their authority extends to other forms of intellectual property rights.
31. Please explain whether and under what circumstances seizure, forfeiture and destruction of infringing goods and any materials and implements are available as remedies in wilful trademark counterfeiting or copyright piracy cases and describe the conditions under which such penalties would be imposed.
32. Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design, and trade secret enforcement for each of the years 1998 and 1999, including the number of cases filed; injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.
33. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for each of the years 1998 and 1999, 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 the criminal system operates effectively to deter copyright piracy and trademark counterfeiting.
34. Please describe any new initiatives that are planned to improve enforcement of intellectual property rights in Chile, particularly initiatives related to criminal enforcement.

COLOMBIA

A. GENERAL

1. Please describe, in relation to each form of intellectual property covered by the TRIPS Agreement, including plant variety protection, the manner in which national treatment and most favoured nation treatment are provided to nationals of other WTO Members.

B. COPYRIGHT AND NEIGHBOURING RIGHTS

2. Please explain how Colombia's copyright law protects computer programs as literary works and complications of data as required by Article 10 of the TRIPS Agreement and cite to the relevant provisions.

3. Article 11 of the TRIPS Agreement requires that rental rights be provided for computer programs and cinematographic works in most instances and Article 14 requires that rental rights be provided to the producers of phonograms. Please describe the manner in which rental rights are provided right holders in these works and phonograms and cite to the relevant provisions of Colombia's copyright law.

4. Please identify the term of protection available with respect to works and with respect to each form of neighbouring rights under Colombia's law on copyright and neighbouring rights and cite to the relevant provisions of law.

5. Article 13 of the TRIPS Agreement obliges WTO Members to confine any limitations or exceptions to copyrights to certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder. Please describe any and all limitations and exceptions to copyrights provided under Colombia's law on copyrights and neighbouring rights and cite to the relevant provision of law. Please indicate how Colombia ensures that those limitations and exceptions do not conflict with the normal exploitation of works and do not unreasonably prejudice the legitimate interests of the right holder.

6. Please describe in detail the rights provided under Colombia's law on copyright and neighbouring rights to performers, broadcasters and producers of phonograms and cite to the relevant provisions of law.

C. TRADEMARKS

7. Please explain how Colombia's trademark law provides for a presumption of likelihood of confusion, as required by Article 16.1 of the TRIPS Agreement, where an identical mark for identical goods and services is used without authorization on identical goods or services, and cite to the relevant provision.

8. Please explain whether and how Colombia's trademark and other laws ensure protection of well-known trademarks and service marks, citing to the relevant provisions of law.

D. GEOGRAPHICAL INDICATIONS

9. Please describe in detail how and under what laws geographical indications are protected in Colombia and cite to the relevant provisions of law.

10. Does the law of Colombia regarding geographical indications provide for any of the exceptions to protection of geographical indications contained in Article 24 of the TRIPS Agreement, and, if so, please describe the way in which the exception is applied and cite to the relevant provisions of law.

E. INDUSTRIAL DESIGNS

11. Please describe in detail the way in which industrial designs, including textile designs, are protected under Colombia's laws and cite to the relevant provisions of law.

F. PATENTS

12. Please explain whether or not inventions within the categories specified below are eligible to be patented under Colombian law if they are otherwise novel, involve an inventive step, and are industrially applicable:

- (a) process inventions which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program;
- (b) product inventions consisting of elements of a computer-implemented invention including:
 - (i) machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; or
 - (ii) a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program;
- (c) process inventions that facilitate the conduct of business;
- (d) isolated or purified forms of materials found in nature; and
- (e) matter related to or intended for use in the human body including matter related the genetic identity of a human.

If any of these types of invention are excluded from patentable subject matter, please explain how Colombian law complies with the obligations of the first paragraph of Article 27 of the TRIPS Agreement that all categories of inventions are patentable subject matter.

13. Animal species and varieties are expressly excluded under Article 7(c) of Decision 344. Plant varieties are not excluded, nor are microorganisms mentioned in Decision 344. Please indicate whether the inventor of a microorganism that is new, involves an inventive step and is industrially applicable may receive a patent for that microorganisms in Colombia.

14. Article 7(b) and (c) of Decision 344 excludes from patentable subject matter "inventions that violate public policy, morals, or proper customs" and "inventions that are obviously contrary to the health or life of persons ..." Article 27.2 of the TRIPS Agreement authorizes exclusion from patentability on the basis of *ordre public* only if it is necessary to prohibit the commercialization of the invention, but not merely because exploitation is prohibited by law. Please describe in detail how Colombia implements Articles 7(b) and (c) of Decision 344, including what criteria are used to determine what is "necessary."

15. Article 7(e) of Decision 344 appears to exclude as patentable subject matter "inventions related to pharmaceutical products shown on the list of essential drugs of the World Health Organization. Please explain how Colombia has implemented this provision in a manner consistent with the prohibition in Article 27 of the TRIPS Agreement against discrimination based upon the area of technology.

16. Article 16 of Decision 344 provided that previously patented products may not be the subject of a new patent simply because a use different from that described in the original patent. Please indicate whether a new use of an existing product may be patented in Colombia if the new use is novel, involves an inventive step and is industrially applicable.

17. The translation of Article 35 of Decision 344 states that patent owners have the right to prevent others from "working" the patented invention without authorization. Please explain what acts, enumerated in Article 28 of the TRIPS Agreement, can serve as the basis for an action of infringement by the patent holder.

18. Please describe in detail any limited exceptions to patent rights that exist under Colombia's laws and indicate what safeguards are used to ensure that such limited exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of third parties.

19. Please describe how Colombia has implemented Article 14 of Decision 344 (that states that, if a right of priority is claimed, a patent application must be accompanied by a copy of the first patent application filed) to ensure that the applicant has up to three months to file the certified copy as provided for in Article 4(D)(3) of the Paris Convention, incorporated by Article 2.1 of the TRIPS Agreement.

20. Article 37 of Decision 344 appears to require that each patented invention must be "worked" in a Member Country of the Andean Community. Please describe the manner in which the Government of Colombia implements this provision to ensure that its obligations under Article 4 and Article 27.1 of the TRIPS Agreement are fulfilled.

21. Articles 42 through 45 of Decision 344 authorize compulsory licences to remedy insufficient working, national emergency and national security interests. Article 46 authorizes compulsory licences for anti-competitive behavior and Article 48 provides for compulsory licences to permit use of a dependent patent. Please describe in detail the manner in which Colombia ensures that each of the conditions established for compulsory licences is met in connection with each form of compulsory licence.

22. Please indicate how many compulsory licences have been granted in each of the last five years.

G. LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

23. Please describe how Colombia implements the obligations of Section 6, Part II of the TRIPS Agreement and cite to relevant provisions of law.

H. PROTECTION OF UNDISCLOSED INFORMATION

24. The last paragraph of Article 72 of Decision 344 defines "industrial secrets" as including only the nature of products, methods of production, or means of distribution. Please describe in detail how this definition encompasses all of the undisclosed information as defined in Article 39.2 of the TRIPS Agreement.

25. Please describe in detail the measures that can be taken by judicial authorities in Colombia to protect the confidentiality of undisclosed information furnished by a party to the court during legal proceedings, as required by Article 42 of the TRIPS Agreement, when the information has been provided either to enforce rights in such information, or for other purposes.

26. In light of the exception provided in the second paragraph of Article 79 of Decision 344, please explain in detail how Colombia protects against unfair commercial use test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals and cite to the relevant provisions of law.

27. Please explain in detail how Colombia protects against disclosure test and other data submitted to obtain marketing approval for pharmaceutical and agricultural chemical products and cite to the relevant provisions of law.

I. ENFORCEMENT

28. Please describe in detail what civil actions and what civil remedies are available under Colombia's laws to right holders of each kind of intellectual property covered by Part II of the TRIPS Agreement, including plant variety protection, that permit effective action against any act of infringement to prevent infringement and deter further infringement, and cite to the provisions of law providing for those remedies.

29. Please state whether decisions on the merit in court proceedings are provided in writing and if those written opinions are available to the public so that people can become familiar with the law.

30. Please describe what civil provisional measures are available to right holders under Colombia's laws, describe the procedures that must be followed and cite the relevant provisions of law.

31. Please state whether judicial authorities have authority to adopt provisional measures *inaudita altera parte*, as required under Article 50.2 of the TRIPS Agreement and under what circumstances that authority will be invoked.

32. Please describe in detail the procedures under Colombia's laws, at least with respect to counterfeit trademarked goods and pirated copyrighted works, that allow right holders to request customs authorities not to release goods into free circulations and cite to the relevant provisions of law. Please indicate if the customs authorities have *ex officio* authority to take such action.

33. Please indicate whether border enforcement is available with regard to other forms of intellectual property rights and cite to the relevant provisions of law.

34. Please describe in detail how Colombia implements the remaining provisions of section 4 of Part III of the TRIPS Agreement, citing to the relevant provisions of law.

35. Please describe in detail the criminal actions and remedies that are available with respect to counterfeit trademarked goods and pirated copyrighted works and cite to the relevant provisions of law.

36. Please indicate the authorities responsible for criminal actions involving intellectual property rights and indicate whether their authority extends to other forms of intellectual property rights.

37. Please explain whether and under what circumstances seizure, forfeiture and destruction of infringing goods and any materials and implements are available as remedies in wilful trademark counterfeiting or copyright piracy cases and describe the conditions under which such penalties would be imposed.

38. Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design, and trade secret enforcement for each of the years 1998 and 1999, including the number of cases filed; injunctions issued; infringing

products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.

39. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for each of the years 1998 and 1999, 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 the criminal system operates effectively to deter copyright piracy and trademark counterfeiting.

40. Please describe any new initiatives that are planned to improve enforcement of intellectual property rights in Colombia, particularly initiatives related to criminal enforcement.

EGYPT

A. GENERAL

1. With respect to each form of intellectual property covered by Part II of the TRIPS Agreement, including plant variety protection, please explain the manner in which the laws of Egypt ensure that nationals of other WTO Members receive national treatment and most favoured nation treatment as required by Articles 3 and 4 of the TRIPS Agreement. Please cite to the relevant provisions of law.

B. COPYRIGHT AND NEIGHBOURING RIGHTS

2. Please explain how Egypt's copyright law protects computer programs as literary works and complications of data as required by Article 10 of the TRIPS Agreement and cite to the relevant provisions of the law.

3. Article 11 of the TRIPS Agreement requires that in most circumstances rental rights be provided with respect at least to computer programs and cinematographic works and Article 14.4 requires that rental rights be provided to producers of phonograms. Please describe how Egypt's law on copyright and neighbouring rights ensures that the required rental rights are provided and cite to the relevant provisions of law.

4. Please identify the term of protection available with respect to works and with respect to each form of neighbouring rights under Egypt's law on copyright and neighbouring rights and cite to the relevant provisions of law.

5. Article 13 of the TRIPS Agreement obliges WTO Members to confine any limitations or exceptions to copyrights to certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder. Please describe any and all limitations and exceptions to copyrights provided under Egypt's law on copyrights and neighbouring rights and cite to the relevant provision of law. Please indicate how Egypt ensures that those limitations and exceptions do not conflict with the normal exploitation of works and do not unreasonably prejudice the legitimate interests of the right holder.

6. Please describe in detail the rights provided under Egypt's law on copyright and neighbouring rights to performers, broadcasters and producers of phonograms and cite to the relevant provisions of law.

7. Article 18 of the Berne Convention, as incorporated into the TRIPS Agreement by Article 9.1 of the TRIPS Agreement requires that copyright be restored for works that are still are protected under copyright in their country of origin and have not had a full term of protection in Egypt. Please

describe in detail how Egypt has implemented this obligation and cite to the relevant provisions of law.

8. Article 14.6 of the TRIPS Agreement requires that protection be restored for phonograms that are still under protection of copyright or neighbouring rights law in their country of origin and that have not had a full term of protection in Egypt. Please describe in detail how Egypt has implemented this obligation and cite to the relevant provisions of law.

C. TRADEMARKS

9. Please describe in detail the subject matter that can comprise a trademark under Egypt's trademark law and cite to the relevant provisions of law.

10. Please describe in detail the procedure that must be followed to register a trademark in Egypt, citing the relevant provisions of the trademark law and describe the rights that the owner of a registered mark acquires with registration.

11. Please explain in detail how Egypt's trademark and other laws provide for the protection of well-known trademarks and servicemarks, citing the relevant provisions of law.

12. Please describe in detail any limitations or special requirements that apply to trademark rights under Egypt's laws and indicate how those limitations take account of the legitimate interests of the owner of the trademark and of third parties.

13. Please indicate the length of the initial term of protection for a registered trademark under Egypt's trademark law and describe the conditions for renewing the registration and the period of the renewal. Please cite to the relevant provisions of Egypt's law.

D. GEOGRAPHICAL INDICATIONS

14. Please describe in detail how and under what laws geographical indications are protected in Egypt and cite to the relevant provisions of law.

15. Does the law of Egypt regarding geographical indications provide for any of the exceptions to protection of geographical indications contained in Article 24 of the TRIPS Agreement, and, if so, please describe the way in which the exception is applied and cite to the relevant provisions of law.

E. INDUSTRIAL DESIGNS

16. Please describe in detail the way in which industrial designs, including textile designs, are protected under Egypt's laws and cite to the relevant provisions of law.

F. PATENTS

17. Article 1 of the Egyptian Patent and Designs Act No. 132 of 1949 (Patent Law) authorizes the grant of patents for new products, new processes, and new applications of known manufacturing methods. Please indicate if patents may be granted for inventions that consist of a new use of a previously known product, if the process is novel and involves an inventive step, as is required by Article 27.1 of the TRIPS Agreement.

18. Please explain whether an invention within the categories specified below may be patented under Egyptian law if it is novel, involves an inventive step, and is industrially applicable:

- (a) process inventions which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program;
- (b) product inventions consisting of elements of a computer-implemented invention including:
 - (i) machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; or
 - (ii) a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program;
- (c) process inventions that facilitate the conduct of business; and
- (d) microorganisms.

19. Under Article 2 of current law, any invention contrary to "law or morality" is automatically excluded from patentable subject matter. Please describe the process by which the Government of Egypt determines whether an invention is contrary to law or morality and the criteria used to make those determinations, citing to the relevant provisions of law. Also, please indicate whether a determination that an invention is excluded from patentability under Article 2 is appealable and, if so, to what body

20. Article 10 of the current patent law states that a patentee has the exclusive right to work his invention by all means. A similar provision is included in Article 6 of the proposed patent law of Egypt. Neither the current or proposed law, however, enumerates the rights specified by Article 28 of the TRIPS Agreement. Please explain in detail the rights given a patentee under Egypt's patent law and cite to the relevant provisions of law.

21. Please identify any exceptions to the rights conferred by a patent in Egypt and indicate the manner in which the law of Egypt ensures that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

22. Article 33 of the TRIPS Agreement requires that patents have a term of protection that does not end before a period of twenty years measured from the date of filing. Please describe the term of protection for patents available under Egypt's patent law and indicate if there is any variation in that term, based upon the area of technology to which the patent relates. If so, please indicate what the variations are and for what technologies and describe Egypt's plans to bring its law into compliance with Article 27.1, which prohibits discrimination in the enjoyment of patent rights based on the field of technology.

23. Please verify that the terms of all patents in existence in Egypt on 1 January 2000, will not end before the expiration a period of twenty years measured from the date of filing.

24. Article 30 of Egypt's patent law authorizes the grant of a compulsory licence three years after the grant of the patent, without reference to whether four years has expired since the filing of the application. Please describe in detail how Egypt ensures that its obligations under Article 5 of the Paris Convention, as incorporated by Article 2.1 of the TRIPS Agreement, are fulfilled.

25. Article 27.1 of the TRIPS Agreement requires that patents be available and patent rights enjoyable without discrimination as to whether products are imported or locally produced. Please verify that importation of patented products will satisfy the working requirement in Egypt's patent law.

26. Please explain how the safeguards contained in Article 31(l) of the TRIPS Agreement are implemented under Egypt's patent law.

27. Please indicate the number of compulsory licences issued under Egypt's patent law in each of the last five years.

28. Please describe in detail the manner in which plant varieties are protected under Egypt's laws.

G. LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

29. Please describe how Egypt implements the obligations of Section 6, Part II of the TRIPS Agreement and cite to relevant provisions of law.

H. PROTECTION OF UNDISCLOSED INFORMATION

30. Paragraph 2 of Article 39 of the TRIPS Agreement requires Members to provide protection for all undisclosed information, including technical know-how and commercial information, which meets certain criteria. This protection must endure as long as the conditions identified in paragraph 2 of Article 39 are met and protection cannot be conditioned on registration. Please explain how Egypt fulfils this obligation.

31. What measures, as required by Article 42 of the TRIPS Agreement, are taken by judicial authorities in Egypt to protect the confidentiality of undisclosed information furnished by a party during legal proceedings to enforce rights in such information, or for other purposes.

32. Paragraph 3 of Article 39 of the TRIPS Agreement requires that Members protect certain test data associated with requests to obtain approval to market pharmaceutical and agricultural chemical products from disclosure and from "unfair commercial use." Please explain how Egypt implements this obligation, and in particular, please explain procedures if any that the Ministry of Health and Population and the Ministry of Agriculture have implemented to give practical effect to this obligation.

I. ENFORCEMENT

33. Please describe in detail what civil actions and what civil remedies are available under Egypt's laws to right holders of each kind of intellectual property covered by Part II of the TRIPS Agreement, including plant variety protection, that permit effective action against any act of infringement to prevent infringement and deter further infringement, and cite to the provisions of law providing for those remedies.

34. Please state whether decisions on the merit in court proceedings are provided in writing and if those written opinions are available to the public so that people can become familiar with the law.

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45. Please describe any new initiatives that are planned to improve enforcement of intellectual property rights in Egypt, particularly initiatives related to criminal enforcement.

GUATEMALA

A. GENERAL

1. Please describe, in relation to each form of intellectual property covered by the TRIPS Agreement, including plant variety protection, the manner in which the laws of Guatemala provide national treatment and most favoured nation treatment to nationals of other WTO Members.

B. COPYRIGHT AND NEIGHBOURING RIGHTS

2. Please explain how Guatemala's copyright law protects computer programs, as literary works and compilations of data as required by Article 10 of the TRIPS Agreement and cite to the relevant provisions of the law.
3. Article 11 of the TRIPS Agreement requires that in most circumstances rental rights be provided with respect at least to computer programs and cinematographic works and Article 14.4 requires that rental rights be provided to producers of phonograms. Please describe how Guatemala's law on copyright and neighbouring rights ensures that the required rental rights are provided and cite to the relevant provisions of law.

4. Please identify the term of protection available with respect to works and with respect to each form of neighbouring rights under Guatemala's law on copyright and neighbouring rights and cite to the relevant provisions of law.

5. Article 13 of the TRIPS Agreement obliges WTO Members to confine any limitations or exceptions to copyrights to certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder. Please describe any and all limitations and exceptions to copyrights provided under Guatemala's law on copyrights and neighbouring rights and cite to the relevant provision of law. Please indicate how Guatemala ensures that those limitations and exceptions do not conflict with the normal exploitation of works and do not unreasonably prejudice the legitimate interests of the right holder.

6. Please describe in detail the rights provided under Guatemala's law on copyright and neighbouring rights to performers, broadcasters and producers of phonograms and cite to the relevant provisions of law.

7. Article 18 of the Berne Convention, as incorporated into the TRIPS Agreement by Article 9.1 of the TRIPS Agreement requires that copyright be restored for works that are still are protected under copyright in their country of origin and have not had a full term of protection in Guatemala. Please describe in detail how Guatemala has implemented this obligation and cite to the relevant provisions of law.

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C. TRADEMARKS

9. Please explain how Guatemala's trademark law provides for a presumption of likelihood of confusion, as required by Article 16.1 of the TRIPS Agreement, where an identical mark for identical goods and services is used without authorization on identical goods or services, and cite to the relevant provision.

10. Please describe in detail any limitations or special requirements that apply to trademark rights under Guatemala's laws and indicate how those limitations take account of the legitimate interests of the owner of the trademark and of third parties.

11. Please explain in detail how Guatemala's trademark and other laws ensure protection of well-known trademarks and service marks, citing to the relevant provisions of law.

D. GEOGRAPHICAL INDICATIONS

12. Please describe in detail how and under what laws geographical indications are protected in Guatemala and cite to the relevant provisions of law.

13. Does the law of Guatemala regarding geographical indications provide for any of the exceptions to protection of geographical indications contained in Article 24 of the TRIPS Agreement, and, if so, please describe the way in which the exception is applied and cite to the relevant provisions of law.

E. INDUSTRIAL DESIGNS

14. Please describe in detail the way in which industrial designs, including textile designs, are protected under Guatemala's laws and cite to the relevant provisions of law.

F. PATENTS

15. Please explain whether an invention within the categories specified below may be patented under Guatemala's patent law if it is novel, involves an inventive step, and is industrially applicable:

- (a) process inventions which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program;
- (b) product inventions consisting of elements of a computer-implemented invention including:
 - (i) machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; or
 - (ii) a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program;
- (c) process inventions that facilitate the conduct of business; and
- (d) micro-organisms.

16. Please describe any exclusions from patentability contained in Guatemala's patent law and cite to the relevant provisions.

17. Please describe in detail the rights acquired by a patent holder in connection with a product patent and in connection with a process patent and cite to the relevant provision of law.

18. Please identify any exceptions to the rights conferred by a patent in Guatemala and indicate the manner in which the law of Guatemala ensures that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

19. Please verify that the terms of all patents in existence in Guatemala on 1 January 2000, and of all patents granted thereafter, will not end before the expiration a period of twenty years measured from the date of filing.

20. Article 27.1 of the TRIPS Agreement requires that patents be available and patent rights enjoyable without discrimination as to whether products are imported or locally produced. Please verify that importation of patented products will satisfy the working requirement in Guatemala's patent law.

21. Please explain how the safeguards contained in Article 31 of the TRIPS Agreement are implemented under Guatemala's patent law in relation to any compulsory license that might be granted and cite to the relevant provisions of law.

22. Please indicate the number of compulsory licenses issued under Guatemala's patent law in each of the last five years.

23. Please describe in detail the manner in which plant varieties are protected under Guatemala's laws.

G. LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

24. Please describe how Guatemala implements the obligations of section 6, Part II of the TRIPS Agreement and cite to relevant provisions of law.

H. UNDISCLOSED INFORMATION

25. Paragraph 2 of Article 39 of the TRIPS Agreement requires Members to provide protection for all undisclosed information, including technical know-how and commercial information, which meets certain criteria. This protection must endure as long as the conditions identified in paragraph 2 of Article 39 are met and protection cannot be conditioned on registration. Please explain how Guatemala fulfils this obligation.

26. What measures, as required by Article 42 of the TRIPS Agreement, are taken by judicial authorities in Guatemala to protect the confidentiality of undisclosed information furnished by a party during legal proceedings to enforce rights in such information, or for other purposes.

27. Paragraph 3 of Article 39 of the TRIPS Agreement requires that Members protect certain test data associated with requests to obtain approval to market pharmaceutical and agricultural chemical products from disclosure and from "unfair commercial use." Please describe in detail how Guatemala implements this obligation to give it practical effect and cite to the relevant provisions of law.

28. Please describe in detail how Guatemala implements the obligation in the same provision of the TRIPS Agreement to protect such data against disclosure and cite to the relevant provisions of law.

I. ENFORCEMENT

29. Please describe in detail what civil actions and what civil remedies are available under Guatemala's laws to right holders of each kind of intellectual property covered by Part II of the TRIPS Agreement, including plant variety protection, that permit effective action against any act of infringement to prevent infringement and deter further infringement, and cite to the provisions of law providing for those remedies.

30. Please state whether decisions on the merit in court proceedings are provided in writing and if those written opinions are available to the public so that people can become familiar with the law.

31. Please describe what civil provisional measures are available to right holders under Guatemala's laws, describe the procedures that must be followed and cite the relevant provisions of law.

32. Please state whether judicial authorities have authority to adopt provisional measures *inaudita altera parte*, as required under Article 50.2 of the TRIPS Agreement and under what circumstances that authority will be invoked.

33. Please describe in detail the procedures under Guatemala's laws, at least with respect to counterfeit trademarked goods and pirated copyrighted works, that allow right holders to request customs authorities not to release goods into free circulations and cite to the relevant provisions of law. Please indicate if the customs authorities have *ex officio* authority to take such action.

34. Please indicate whether border enforcement is available with regard to other forms of intellectual property rights and cite to the relevant provisions of law.
35. Please describe in detail how Guatemala implements the remaining provisions of section 4 of Part III of TRIPs, citing to the relevant provisions of law.
36. Please describe in detail the criminal actions and remedies that are available with respect to counterfeit trademarked goods and pirated copyrighted works and cite to the relevant provisions of law.
37. Please indicate the authorities responsible for criminal actions involving intellectual property rights and indicate whether their authority extends to other forms of intellectual property rights.
38. Please explain whether and under what circumstances seizure, forfeiture and destruction of infringing goods and any materials and implements are available as remedies in wilful trademark counterfeiting or copyright piracy cases and describe the conditions under which such penalties would be imposed.
39. Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated -circuit layout design, and trade secret enforcement for each of the years 1998 and 1999, including the number of cases filed; injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.
40. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for each of the years 1998 and 1999, 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 the criminal system operates effectively to deter copyright piracy and trademark counterfeiting.
41. Please describe any new initiatives that are planned to improve enforcement of intellectual property rights in Guatemala, particularly initiatives related to criminal enforcement.

PERU

A. GENERAL

1. Please describe, in relation to each form of intellectual property covered by the TRIPS Agreement, including plant variety protection, the manner in which Peru provides national treatment and most favoured nation treatment to nationals of other WTO Members.

B. COPYRIGHT

2. Please explain how Peru's copyright law protects computer programs as literary works and complications of data as required by Article 10 of the TRIPS Agreement and cite to the relevant provisions.
3. Article 11 of the TRIPS Agreement requires that rental rights be provided for computer programs and cinematographic works in most instances and Article 14 requires that rental rights be provided to the producers of phonograms. Please describe the manner in which rental rights are provided right holders in these works and phonograms and cite to the relevant provisions of Peru's copyright law.

C. TRADEMARKS

4. Please explain how Peru's trademark law provides for a presumption of likelihood of confusion, as required by Article 16.1 of the TRIPS Agreement, where an identical mark for identical goods and services is used without authorization on identical goods or services, and cite to the relevant provision.

5. Please explain whether and how Peru's trademark and other laws ensure protection of well-known trademarks and service marks, citing to the relevant provisions of law.

D. GEOGRAPHICAL INDICATIONS

6. Please describe in detail how and under what laws geographical indications are protected in Peru and cite to the relevant provisions of law.

7. Does the law of Peru regarding geographical indications provide for any of the exceptions to protection of geographical indications contained in Article 24 of the TRIPS Agreement, and, if so, please describe the way in which the exception is applied and cite to the relevant provisions of law.

E. INDUSTRIAL DESIGNS

8. Please describe in detail the way in which industrial designs, including textile designs, are protected under Peru's laws and cite to the relevant provisions of law.

F. PATENTS

9. Please explain whether or not inventions within the categories specified below are eligible to be patented under Peruvian law if they are otherwise novel, involve an inventive step, and are industrially applicable:

- (a) process inventions which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program;
- (b) product inventions consisting of elements of a computer-implemented invention including:
 - (i) machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; or
 - (ii) a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program;
- (c) process inventions that facilitate the conduct of business;
- (d) micro-organisms of all kinds.

10. Animal species and varieties are expressly excluded under Article 7(c) of Decision 344. Plant varieties are not excluded, nor are microorganisms mentioned in Decision 344. Please indicate whether the inventor of a microorganism that is new, involves an inventive step and is industrially applicable may receive a patent for that microorganisms in Peru.

11. Article 7(b) and (c) of Decision 344 excludes from patentable subject matter "inventions that violate public policy, morals, or proper customs" and "inventions that are obviously contrary to the

health or life of persons ..." Article 27.2 of the TRIPS Agreement authorizes exclusion from patentability on the basis of *ordre public* only if it is necessary to prohibit the commercialization of the invention, but not merely because exploitation is prohibited by law. Please describe in detail how Peru implements Articles 7(b) and (c) of Decision 344, including what criteria are used to determine what is "necessary."

12. Article 7(e) of Decision 344 appears to exclude as patentable subject matter "inventions related to pharmaceutical products shown on the list of essential drugs of the World Health Organization." Please explain how Peru has implemented this provision in a manner consistent with the prohibition in Article 27 of the TRIPS Agreement against discrimination based upon the area of technology.

13. Article 16 of Decision 344 provided that previously patented products may not be the subject of a new patent simply because a use different from that described in the original patent. Please indicate whether a new use of an existing product may be patented in Peru if the new use is novel, involves an inventive step and is industrially applicable.

14. The translation of Article 35 of Decision 344 states that patent owners have the right to prevent others from "working" the patented invention without authorization. Please explain what acts, enumerated in Article 28 of the TRIPS Agreement, can serve as the basis for an action of infringement in Peru by the patent holder.

15. Please describe in detail any limited exceptions to patent rights that exist under Peru's laws and indicate what safeguards are used to ensure that such limited exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of third parties.

16. Please describe how Peru has implemented Article 14 of Decision 344 (that states that, if a right of priority is claimed, a patent application must be accompanied by a copy of the first patent application filed) to ensure that the applicant has up to three months to file the certified copy as provided for in Article 4(D)(3) of the Paris Convention, incorporated by Article 2.1 of the TRIPS Agreement.

17. Article 37 of Decision 344 appears to require that each patented invention must be "worked" in a Member Country of the Andean Community. Please describe the manner in which the Government of Peru implements this provision to ensure that its obligations under Article 4 and Article 27.1 of the TRIPS Agreement are fulfilled.

18. Articles 42 through 45 of Decision 344 authorize compulsory licences to remedy insufficient working, national emergency and national security interests. Article 46 authorizes compulsory licences for anti-competitive behaviour and Article 48 provides for compulsory licences to permit use of a dependent patent. Please describe in detail the manner in which Peru ensures that each of the conditions established for compulsory licences is met in connection with each form of compulsory licence.

19. Please indicate how many compulsory licences have been granted in each of the last five years.

G. LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

20. Please describe in detail how Peru implements the obligations of section 6, Part II of the TRIPS Agreement and cite to relevant provisions of law.

H. PROTECTION OF UNDISCLOSED INFORMATION

21. The last paragraph of Article 72 of Decision 344 defines "industrial secrets" as including only the nature of products, methods of production, or means of distribution. Please describe in detail how this definition encompasses all of the undisclosed information as defined in Article 39.2 of the TRIPS Agreement.

22. Please describe in detail the measures that can be taken by judicial authorities in Peru to protect the confidentiality of undisclosed information furnished by a party to the court during legal proceedings, as required by Article 42 of the TRIPS Agreement, when the information has been provided either to enforce rights in such information, or for other purposes.

23. In light of the exception provided in the second paragraph of Article 79 of Decision 344, please explain in detail how Peru protects against unfair commercial use test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals and cite to the relevant provisions of law.

24. Please explain in detail how Peru protects against disclosure test and other data submitted to obtain marketing approval for pharmaceutical and agricultural chemical products and cite to the relevant provisions of law.

I. ENFORCEMENT

25. Please describe in detail what civil actions and what civil remedies are available under Peru's laws to right holders of each kind of intellectual property covered by Part II of the TRIPS Agreement, including plant variety protection, that permit effective action against any act of infringement to prevent infringement and deter further infringement, and cite to the provisions of law providing for those remedies.

26. Please state whether decisions on the merit in court proceedings are provided in writing and if those written opinions are available to the public so that people can become familiar with the law.

27. Please describe what civil provisional measures are available to right holders under Peru's laws, describe the procedures that must be followed and cite the relevant provisions of law.

28. Please state whether judicial authorities have authority to adopt provisional measures *inaudita altera parte*, as required under Article 50.2 of the TRIPS Agreement and under what circumstances that authority will be invoked.

29. Please describe in detail the procedures under Peru's laws, at least with respect to counterfeit trademarked goods and pirated copyrighted works, that allow right holders to request customs authorities not to release goods into free circulations and cite to the relevant provisions of law. Please indicate if the customs authorities have *ex officio* authority to take such action.

30. Please indicate whether border enforcement is available with regard to other forms of intellectual property rights and cite to the relevant provisions of law.

31. Please describe in detail how Peru implements the remaining provisions of Section 4 of Part III of the TRIPS Agreement, citing to the relevant provisions of law.

32. Please describe in detail the criminal actions and remedies that are available with respect to counterfeit trademarked goods and pirated copyrighted works and cite to the relevant provisions of law.

33. Please indicate the authorities responsible for criminal actions involving intellectual property rights and indicate whether their authority extends to other forms of intellectual property rights.

34. Please explain whether and under what circumstances seizure, forfeiture and destruction of infringing goods and any materials and implements are available as remedies in willful trademark counterfeiting or copyright piracy cases and describe the conditions under which such penalties would be imposed.

35. Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design, and trade secret enforcement for each of the years 1998 and 1999, including the number of cases filed; injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.

36. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for each of the years 1998 and 1999, 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 the criminal system operates effectively to deter copyright piracy and trademark counterfeiting.

37. Please describe any new initiatives that are planned to improve enforcement of intellectual property rights in Peru, particularly initiatives related to criminal enforcement.
