

# WORLD TRADE ORGANIZATION

RESTRICTED

IP/C/W/244/Add.1  
26 November 2001

(01-6037)

Council for Trade-Related Aspects  
of Intellectual Property Rights

Original: English

## REVIEW OF LEGISLATION

### Follow-up questions posed by the European Communities and their member States to Brazil

#### Addendum

By means of a communication from the Permanent Mission of the European Commission dated 23 November 2001, the Secretariat has received a copy of the following follow-up questions that the European Communities and their member States have communicated to Brazil. These questions follow up responses to initial questions provided by Brazil which have been circulated in document IP/C/W/303/Add.1.

#### B. COPYRIGHT AND RELATED RIGHTS

2. *Please state how your legislation provides for the protection of the exclusive rights of authors in relation to their literary and artistic works, as specified in Article 9 of the TRIPS Agreement which requires Members to comply with Articles 1-21 of the Berne Convention and the Appendix to the Berne Convention (1971)).*

Please see Law No. 9.610 of 1998, in particular Articles 22 up to 45.

#### Follow-up question:

**Please quote the Articles of Law No. 9.610 of 1998 in which the provisions corresponding to the Articles of the Berne Convention indicated below appear:**

**Article 2(1) - the definition of "literary and artistic works";**

**Article 3;**

**Article 4(b); and**

**Article 5.**

4. *Please state whether your legislation provides for a rental right and, if so, the works to which it applies.*

The rental right, in Brazil, is applied to all kinds of works.

**Follow-up question:**

**Please cite the precise provision for a rental right, in compliance with Article 11 of the TRIPS Agreement, in respect of:**

- (a) cinematographic films in Law No. 9.610 of 1998; and
- (b) computer programs in Law No. 9.609 of 1998.

8. *Please clarify how the fourth paragraph of Article 2 of Law No. 9.609 on the protection of software, which submits such a protection to a reciprocity principle, is in accordance with the relevant provisions of the TRIPS Agreement (Articles 3 and 9) and of the Berne Convention (Article 5) on national treatment.*

[Response not received]

**Follow-up question:**

**Please provide the outstanding response.**

F. PATENTS

34. *Please describe if your legislation provides for limited exceptions to the exclusive rights conferred by a patent. If affirmative, please make a reference to relevant legislation.*

Yes. Please see Articles 43 up to 45 of Law No. 9.279 of 1996.

**Follow-up question:**

**Having examined Articles 43 to 45 of Law No. 9.279 of 1996, the European Communities are concerned as to how Article 43(iii) would be interpreted in Brazil. A medicine prepared in accordance with a medical prescription could be so prepared for many thousands of "individual cases". Please confirm that Article 43(iii) will be interpreted in Brazil in accordance with both the letter and spirit of Article 30 of the TRIPS Agreement.**

35. *Please explain whether or not your legislation provides for compulsory licensing. If so, please explain in detail the conditions under which a compulsory licence may be granted. In particular, please explain how your national legislation considers individual merits in the authorization of such use.*

[Response not received]

**Follow-up question:**

**Although no response has been received to this question, the European Communities have examined the provisions of Articles 68 to 74 of Law No. 9.279 of 1996 and no provisions are immediately apparent corresponding to the wording of Article 31(a), (b), (e), (f), (j), (l)(ii) or (l)(iii) of the TRIPS Agreement.**

**Please cite the Articles of Law No. 9.279 in which phraseology corresponding to the quoted Articles of the TRIPS Agreement are to be found.**

38. *Please explain how your legislation provides for the enhanced patent protection of patents or patent applications pending on 1 January 1995.*

Please see Articles 229 and 229-B of Law No.9.279 of 1996, pursuant to the modifications made by Law No. 10.196 of 2001.

**Follow-up question:**

**Please provide a copy of Article 229-B of Law No. 9.279 of 1996 which was inserted pursuant to the modifications made by Law No. 10.196 of 2001.**

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

40. *Please describe how your legislation protects Topographies.*

Unfair competition provisions may be applied. Besides that, it is to be said that there is a bill on this subject in Congress.

**Follow-up question:**

**Please advise whether:**

**(a) the Bill has been passed by Congress; and**

**(b) the Bill is in compliance with Articles 35 to 38 of the TRIPS Agreement.**

41. *Please explain what protection your national legislation grants to right holders against the unlawful importation, sale or distribution for commercial purposes of topographies including integrated circuits or other articles in which a topography is incorporated in accordance with Article 36 of the TRIPS Agreement.*

Please see answer to question 40.

**Follow-up question:**

**The follow-up question is the same as in relation to question 40.**

42. *Please explain how your legislation provides for the derogation from Article 36 of the TRIPS Agreement as specified in Article 37 of the TRIPS Agreement where a person has no knowledge or reasonable grounds to know when acquiring an integrated circuit or an article incorporating such an integrated circuit that it contains an unlawful topography.*

Please see answer to question 40.

**Follow-up question:**

**The follow-up question is the same as in relation to question 40.**

43. *Please state the term of protection granted by your legislation to topographies.*

Please see answer to question 40.

**Follow-up question:**

**The follow-up question is the same as in relation to question 40.**

---