

WORLD TRADE ORGANIZATION

RESTRICTED

IP/C/W/274
12 June 2001

(01-2910)

**Council for Trade-Related Aspects
of Intellectual Property Rights**

Original: English

REVIEW OF LEGISLATION

Questions posed by the European Communities and their member States

By means of a communication from the Permanent Mission of the European Commission, dated 7 June 2001, the Secretariat has received copies of the following questions that the European Communities and their member States have communicated to Albania, Antigua and Barbuda, Argentina, Bahrain, Botswana, Costa Rica, Côte d'Ivoire, Croatia, Dominica, Dominican Republic, Egypt, Fiji, Georgia, Ghana, Honduras, Jamaica, Kenya, Mauritius, Morocco, Nicaragua, Oman, the Philippines, Saint Kitts and Nevis and the United Arab Emirates, respectively.

ALBANIA

A. GENERAL PROVISIONS

1. Please describe if your legislation includes measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to your socio-economic and technological development as mentioned under Article 8 of the TRIPS Agreement. If yes, please explain how such measures are consistent with the provisions of the TRIPS Agreement.

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)).

3. Please describe the protection accorded to authors of computer programs, databases or compilations of data.

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

5. Please describe the rights granted to performers, producers of phonograms (sound recordings) and broadcasting organisations under your legislation.

6. Please state whether your legislation provides for any limitation or exception in relation to each of the rights described above in accordance with the relevant provisions of the Berne and Rome Conventions and in light of Articles 13 and 14.6 of the TRIPS Agreement.

7. Please state the terms of protection of each right described above and the work or subject matter to which it applies.

8. Please state how your legislation grants the retroactive protection provided pursuant to Article 18 of the Berne Convention (the obligation of which derives from Article 9 of the TRIPS Agreement) and Article 14.6 of the TRIPS Agreement.

C. TRADEMARKS

9. Please give the definition of a sign under your national legislation and explain under what conditions it is protectable.

10. Please confirm whether or not services are a protectable subject matter in your trademark law. Please confirm if signs, such as trade names, are protectable. Please describe if elements such as sound, perfumes and containers are protectable.

11. Please explain what the requirements of use are, if any, as a condition for a trademark registration. Please explain the definition of use and the conditions of maintenance of a registration in that respect.

12. Please confirm whether or not your legislation permits that the registration of trademarks be indefinitely renewable.

13. Please describe the special requirements, if any, prescribed by your legislation concerning the use of a trademark.

D. GEOGRAPHICAL INDICATIONS

14. Please explain whether or not your trademark registration authority refuses a trademark application if it contains a geographical indication.

15. Please give the definition of a geographical indication in your legislation.

16. Please describe and explain the provisions of your legislation establishing a link, if any, between the characteristics of an indication and its geographical origin.

17. Please describe how additional protection is granted by your legislation to wines and spirits. Please mention other types of products, if any, covered by this additional protection.

18. Please explain how exceptions under Article 24 of the TRIPS Agreement are used in your jurisdiction. Please provide examples of the use of the exceptions by courts or lists of names considered as generic in your jurisdiction.

E. INDUSTRIAL DESIGNS

19. Please explain whether or not your legislation extends to the protection of designs dictated essentially by technical or functional considerations. Please explain how textile designs are protected.
20. Please explain how your legislation protects right holders of a design against importing of articles bearing embodied or copied design.
21. Please state whether or not your legislation provides for the right to issue a compulsory licence for industrial designs.
22. Please indicate for what period of time your legislation grants protection for industrial designs.

F. PATENTS

23. Please describe how your legislation defines the notions of: novelty, inventiveness and industrial application.
24. Please explain whether or not in your legislation, patent or otherwise, patent rights are enjoyed without any exclusions. If exclusions are provided for, please describe in detail how these exclusions are applied in legal as well as practical terms.
25. Please explain whether your legislation provides for the exclusion of inventions from patentability based on *ordre public* or morality. If so, please explain the relevant section of your legislation and explain its formulation. Please also explain if it has been applied in practice.
26. Please explain whether or not diagnostic, therapeutic and surgical methods are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.
27. Please explain whether or not plants, animals and essentially biological processes are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.
28. Please describe how micro-organisms, non-essentially biological processes, microbiological processes and plant varieties are protected in your legislation. Please explain, in this respect, the relevant sections of your legislation.
29. Please explain how your legislation protects patent right holders against the importing and against the offering for sale of a patented invention.
30. Please state if your legislation provides for patent product protection of pharmaceutical and agricultural chemical products. In the affirmative, please indicate the legal reference.
31. Please clarify if the patent protection of a process, as provided for in your legislation, covers the product obtained directly by that process.
32. Please explain the additional conditions, if any, in your legislation other than the sufficient disclosure of the invention in Article 29 of the TRIPS Agreement (*e.g.* submission of justification for

access to genetic material or prior informed consent to its use). If such additional conditions exist, please point out the relevant legislations and describe the additional conditions in detail.

33. 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.

34. 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.

35. Please explain how your legislation explicitly ensures that a 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. In this context, how do you define "reasonable period of time". Please also explain how your legislation ensures that the use of a compulsory licence shall be authorised predominantly for the supply to the domestic market of the Member authorizing such use.

36. Please state if your legislation grants additional protection for innovations after the 20 years of patent protection has lapsed.

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

38. Please explain how your legislation provides for the reversal of the burden of proof in relation to process patents.

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

39. Please describe how your legislation protects Topographies.

40. 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.

41. Please explain how your legislation provides for the derogation from Article 36 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.

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

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43. Please explain whether or not your legislation grants a defined period of time for the protection of undisclosed information. If so, please give the time span.

44. Please explain how your legislation defines undisclosed information.

45. Please explain how your legislation defines data submitted to governments or governmental agencies.

I. ENFORCEMENT

46. Please describe how your legislation provides for effective action against infringement of intellectual property rights.

47. Please explain whether or not your legislation provides for a mechanism to appeal to judicial bodies of final administrative decisions.

48. Please describe how your legislation authorizes judges to order production of evidence by the opposing party. Please give precise information on what measures are taken to ensure the protection of confidential information.

49. Please quote provisions of your legislation that authorize judges to order a defendant to desist from an infringement.

50. Please quote what provisions of your legislation authorize judges to order the payment to the right holder of adequate damages to compensate the injury he suffered.

51. Please quote what provisions of your legislation authorize judges to order the payment of the right holder's expenses by the infringer.

52. Please explain if and how judges have the authority to order that infringing goods are placed outside channels of commerce or destroyed.

53. Please quote what provisions of your legislation authorize judges to indemnify a defendant in the event of abuse by the plaintiff.

54. Please explain how your legislation implements Article 50 of the TRIPS Agreement.

55. Please identify the competent authorities in your jurisdiction who receive requests from right holders for an application to suspend the release of counterfeit goods by the customs authorities.

56. Please indicate whether or not procedures are available to suspend the exporting of counterfeit goods.

57. Please quote what provisions of your legislation authorize the competent authorities to order the destruction or disposal of infringing goods.

58. Please indicate whether or not your legislation provides for a *de minimis* imports exception.

59. Please explain how your legislation implements Article 61 of the TRIPS Agreement.

ANTIGUA AND BARBUDA

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6. Please state whether your legislation provides for any limitation or exception in relation to each of the rights described above in accordance with the relevant provisions of the Berne and Rome Conventions and in light of Articles 13 and 14.6 of the TRIPS Agreement.

7. Please state the terms of protection of each right described above and the work or subject matter to which it applies.

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23. Please describe how your legislation defines the notions of: novelty, inventiveness and industrial application.

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

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52. Please explain if and how judges have the authority to order that infringing goods are placed outside channels of commerce or destroyed.

53. Please quote what provisions of your legislation authorize judges to indemnify a defendant in the event of abuse by the plaintiff.
54. Please explain how your legislation implements Article 50 of the TRIPS Agreement.
55. Please identify the competent authorities in your jurisdiction who receive requests from right holders for an application to suspend the release of counterfeit goods by the customs authorities.
56. Please indicate whether or not procedures are available to suspend the exporting of counterfeit goods.
57. Please quote what provisions of your legislation authorize the competent authorities to order the destruction or disposal of infringing goods.
58. Please indicate whether or not your legislation provides for a de minimis imports exception.
59. Please explain how your legislation implements Article 61 of the TRIPS Agreement.

ARGENTINA

A. GENERAL PROVISIONS

1. Please describe if your legislation includes measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to your socio-economic and technological development as mentioned under Article 8 of the TRIPS Agreement. If yes, please explain how such measures are consistent with the provisions of the TRIPS Agreement.

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4. Please state whether your legislation provides for a rental right and, if so, the works to which it applies.
5. Please describe the rights granted to performers, producers of phonograms (sound recordings) and broadcasting organisations under your legislation.
6. Please state whether your legislation provides for any limitation or exception in relation to each of the rights described above in accordance with the relevant provisions of the Berne and Rome Conventions and in light of Articles 13 and 14.6 of the TRIPS Agreement.

7. Please state the terms of protection of each right described above and the work or subject matter to which it applies.

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11. Please explain what the requirements of use are, if any, as a condition for a trademark registration. Please explain the definition of use and the conditions of maintenance of a registration in that respect.

12. Please confirm whether or not your legislation permits that the registration of trademarks be indefinitely renewable.

13. Please describe the special requirements, if any, prescribed by your legislation concerning the use of a trademark.

D. GEOGRAPHICAL INDICATIONS

14. Please explain whether or not your trademark registration authority refuses a trademark application if it contains a geographical indication.

15. Please give the definition of a geographical indication in your legislation.

16. Please describe and explain the provisions of your legislation establishing a link, if any, between the characteristics of an indication and its geographical origin.

17. Please describe how additional protection is granted by your legislation to wines and spirits. Please mention other types of products, if any, covered by this additional protection.

18. Please explain how exceptions under Article 24 of the TRIPS Agreement are used in your jurisdiction. Please provide examples of the use of the exceptions by courts or lists of names considered as generic in your jurisdiction.

19. Please provide examples of geographical indications for wine under the applicable legislation and how they comply with the definition of Article 22.1 of the TRIPS Agreement.

20. Please explain which legal criteria determine whether the use of a certain geographical indication for wine, which, although literally true as to the territory, region or locality in which the wine is made falsely represents to the public that the goods originate in another territory (Article 22.4 of the TRIPS Agreement).

21. Please explain how your legislation implements the obligation of Article 24.3 of the TRIPS Agreement of not to diminish the level of protection of geographical indications that existed in a Member immediately prior to the entry into force of the WTO Agreement where a new Argentinian geographical indication conflicts with an existing, well-known geographical indication for wines of another WTO Member.

E. INDUSTRIAL DESIGNS

22. Please explain whether or not your legislation extends to the protection of designs dictated essentially by technical or functional considerations. Please explain how textile designs are protected.

23. Please explain how your legislation protects right holders of a design against importing of articles bearing embodied or copied design.

24. Please state whether or not your legislation provides for the right to issue a compulsory licence for industrial designs.

25. Please indicate for what period of time your legislation grants protection for industrial designs.

F. PATENTS

26. Please describe how your legislation defines the notions of: novelty, inventiveness and industrial application.

27. Please explain whether or not in your legislation, patent or otherwise, patent rights are enjoyed without any exclusions. If exclusions are provided for, please describe in detail how these exclusions are applied in legal as well as practical terms.

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33. Please state if your legislation provides for patent product protection of pharmaceutical and agricultural chemical products. In the affirmative, please indicate the legal reference.

34. Please clarify if the patent protection of a process, as provided for in your legislation, covers the product obtained directly by that process.

35. Please explain the additional conditions, if any, in your legislation other than the sufficient disclosure of the invention in Article 29 of the TRIPS Agreement (e.g. submission of justification for access to genetic material or prior informed consent to its use). If such additional conditions exist, please point out the relevant legislations and describe the additional conditions in detail.

36. 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.

37. 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.

38. Please explain how your legislation explicitly ensures that a 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. In this context, how do you define "reasonable period of time". Please also explain how your legislation ensures that the use of a compulsory licence shall be authorised predominantly for the supply to the domestic market of the Member authorizing such use.

39. Please state if your legislation grants additional protection for innovations after the 20 years of patent protection has lapsed.

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BAHRAIN

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

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43. Please explain whether or not your legislation grants a defined period of time for the protection of undisclosed information. If so, please give the time span.

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45. Please explain how your legislation defines data submitted to governments or governmental agencies.

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59. Please explain how your legislation implements Article 61 of the TRIPS Agreement.

BOTSWANA

A. GENERAL PROVISIONS

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5. Please describe the rights granted to performers, producers of phonograms (sound recordings) and broadcasting organisations under your legislation.
6. Please state whether your legislation provides for any limitation or exception in relation to each of the rights described above in accordance with the relevant provisions of the Berne and Rome Conventions and in light of Articles 13 and 14.6 of the TRIPS Agreement.

7. Please state the terms of protection of each right described above and the work or subject matter to which it applies.

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COSTA RICA

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COTE D'IVOIRE

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CROATIA

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9. Please explain how your legislation provides for effective means of enforcement of the level of protection of Article 14.2 of the TRIPS Agreement with regard to licensing and, in particular, how Egyptian authorities authenticate that only licensing agreements involving the legitimate licensors are actually recognised as enabling Egyptian companies to manufacture and/or distribute music recordings. In addition, please explain what legal means are available to the legitimate licensor of music recordings to prevent recognised and yet unlawful licensees to continue to unlawfully manufacture/distribute music recording

C. TRADEMARKS

10. Please give the definition of a sign under your national legislation and explain under what conditions it is protectable.

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GEORGIA

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54. Please explain how your legislation implements Article 50 of the TRIPS Agreement.

55. Please identify the competent authorities in your jurisdiction who receive requests from right holders for an application to suspend the release of counterfeit goods by the customs authorities.

56. Please indicate whether or not procedures are available to suspend the exporting of counterfeit goods.

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GHANA

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MAURITIUS

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50. Please quote what provisions of your legislation authorize judges to order the payment to the right holder of adequate damages to compensate the injury he suffered.
51. Please quote what provisions of your legislation authorize judges to order the payment of the right holder's expenses by the infringer.
52. Please explain if and how judges have the authority to order that infringing goods are placed outside channels of commerce or destroyed.
53. Please quote what provisions of your legislation authorize judges to indemnify a defendant in the event of abuse by the plaintiff.
54. Please explain how your legislation implements Article 50 of the TRIPS Agreement.
55. Please identify the competent authorities in your jurisdiction who receive requests from right holders for an application to suspend the release of counterfeit goods by the customs authorities.
56. Please indicate whether or not procedures are available to suspend the exporting of counterfeit goods.
57. Please quote what provisions of your legislation authorize the competent authorities to order the destruction or disposal of infringing goods.
58. Please indicate whether or not your legislation provides for a *de minimis* imports exception.
59. Please explain how your legislation implements Article 61 of the TRIPS Agreement.

UNITED ARAB EMIRATES

A. GENERAL PROVISIONS

1. Please describe if your legislation includes measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to your socio-economic and technological development as mentioned under Article 8 of the TRIPS Agreement. If yes, please explain how such measures are consistent with the provisions of the TRIPS Agreement.

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)).

3. Please describe the protection accorded to authors of computer programs, databases or compilations of data.

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

5. Please describe the rights granted to performers, producers of phonograms (sound recordings) and broadcasting organisations under your legislation.

6. Please state whether your legislation provides for any limitation or exception in relation to each of the rights described above in accordance with the relevant provisions of the Berne and Rome Conventions and in light of Articles 13 and 14.6 of the TRIPS Agreement.

7. Please state the terms of protection of each right described above and the work or subject matter to which it applies.

8. Please state how your legislation grants the retroactive protection provided pursuant to Article 18 of the Berne Convention (the obligation of which derives from Article 9 of the TRIPS Agreement) and Article 14.6 of the TRIPS Agreement.

C. TRADEMARKS

9. Please give the definition of a sign under your national legislation and explain under what conditions it is protectable.

10. Please confirm whether or not services are a protectable subject matter in your trademark law. Please confirm if signs, such as trade names, are protectable. Please describe if elements such as sound, perfumes and containers are protectable.

11. Please explain what the requirements of use are, if any, as a condition for a trademark registration. Please explain the definition of use and the conditions of maintenance of a registration in that respect.

12. Please confirm whether or not your legislation permits that the registration of trademarks be indefinitely renewable.

13. Please describe the special requirements, if any, prescribed by your legislation concerning the use of a trademark.

D. GEOGRAPHICAL INDICATIONS

14. Please explain whether or not your trademark registration authority refuses a trademark application if it contains a geographical indication.

15. Please give the definition of a geographical indication in your legislation.
16. Please describe and explain the provisions of your legislation establishing a link, if any, between the characteristics of an indication and its geographical origin.
17. Please describe how additional protection is granted by your legislation to wines and spirits. Please mention other types of products, if any, covered by this additional protection.
18. Please explain how exceptions under Article 24 of the TRIPS Agreement are used in your jurisdiction. Please provide examples of the use of the exceptions by courts or lists of names considered as generic in your jurisdiction.

E. INDUSTRIAL DESIGNS

19. Please explain whether or not your legislation extends to the protection of designs dictated essentially by technical or functional considerations. Please explain how textile designs are protected.
20. Please explain how your legislation protects right holders of a design against importing of articles bearing embodied or copied design.
21. Please state whether or not your legislation provides for the right to issue a compulsory licence for industrial designs.
22. Please indicate for what period of time your legislation grants protection for industrial designs.

F. PATENTS

23. Please describe how your legislation defines the notions of: novelty, inventiveness and industrial application.
24. Please explain whether or not in your legislation, patent or otherwise, patent rights are enjoyed without any exclusions. If exclusions are provided for, please describe in detail how these exclusions are applied in legal as well as practical terms.
25. Please explain whether your legislation provides for the exclusion of inventions from patentability based on *ordre public* or morality. If so, please explain the relevant section of your legislation and explain its formulation. Please also explain if it has been applied in practice.
26. Please explain whether or not diagnostic, therapeutic and surgical methods are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.
27. Please explain whether or not plants, animals and essentially biological processes are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.
28. Please describe how micro-organisms, non-essentially biological processes, microbiological processes and plant varieties are protected in your legislation. Please explain, in this respect, the relevant sections of your legislation.

29. Please explain how your legislation protects patent right holders against the importing and against the offering for sale of a patented invention.

30. Please state if your legislation provides for patent product protection of pharmaceutical and agricultural chemical products. In the affirmative, please indicate the legal reference.

31. Please clarify if the patent protection of a process, as provided for in your legislation, covers the product obtained directly by that process.

32. Please explain the additional conditions, if any, in your legislation other than the sufficient disclosure of the invention in Article 29 of the TRIPS Agreement (*e.g.* submission of justification for access to genetic material or prior informed consent to its use). If such additional conditions exist, please point out the relevant legislations and describe the additional conditions in detail.

33. 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.

34. 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.

35. Please explain how your legislation explicitly ensures that a 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. In this context, how do you define "reasonable period of time". Please also explain how your legislation ensures that the use of a compulsory licence shall be authorised predominantly for the supply to the domestic market of the Member authorizing such use.

36. Please state if your legislation grants additional protection for innovations after the 20 years of patent protection has lapsed.

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

38. Please explain how your legislation provides for the reversal of the burden of proof in relation to process patents.

39. Please explain which mechanism does your legal framework envision to ensure that only legitimate patent owners are allowed to manufacture or to authorise to manufacture pharmaceutical products. Please explain how any such mechanism applies and has applied in the transitional periods following amendments to the applicable laws, if any.

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

40. Please describe how your legislation protects Topographies.

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.

42. Please explain how your legislation provides for the derogation from Article 36 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.

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

H. PROTECTION OF UNDISCLOSED INFORMATION

44. Please explain whether or not your legislation grants a defined period of time for the protection of undisclosed information. If so, please give the time span.

45. Please explain how your legislation defines undisclosed information.

46. Please explain how your legislation defines data submitted to governments or governmental agencies.

I. ENFORCEMENT

47. Please describe how your legislation provides for effective action against infringement of intellectual property rights.

48. Please explain whether or not your legislation provides for a mechanism to appeal to judicial bodies of final administrative decisions.

49. Please describe how your legislation authorizes judges to order production of evidence by the opposing party. Please give precise information on what measures are taken to ensure the protection of confidential information.

50. Please quote provisions of your legislation that authorize judges to order a defendant to desist from an infringement.

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