

# WORLD TRADE ORGANIZATION

IP/Q/ARG/1/Add.1  
IP/Q2/ARG/1/Add.1  
IP/Q3/ARG/1/Add.1  
IP/Q4/ARG/1/Add.1  
22 January 2003  
(03-0338)

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

Original: Spanish/  
English

## REVIEW OF LEGISLATION

### ARGENTINA

#### Addendum

By means of a communication from the Permanent Mission of Argentina, dated 25 November 2002, the Secretariat has received the following replies to questions addressed to Argentina by Canada, the European Communities and their member States and Switzerland in connection with the review of its legislation at the Council's meeting of 18 to 22 June 2001.

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### CANADA

**1. Please describe how the enforcement obligations (Articles 41-61 of the TRIPS Agreement and throughout) have been implemented.**

See Argentina's replies to the Check-list of Issues on Enforcement.<sup>1</sup>

### EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

#### F. PATENTS

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

Law No. 24.481 on Patents, amended by Law No. 24.572 (harmonized text 1996), hereinafter the Law on Patents, defines the notions of novelty, inventiveness and industrial application in Article 4.

**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.**

Exclusions from patentability are provided for in Articles 6 and 7 of Law on Patents.

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<sup>1</sup> Document IP/N/6/ARG/1.

**28. 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.**

Yes, the relevant provisions appear in Article 7(a) of the Law on Patents and Article 7 of Decree 260/96.

**29. 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.**

They are excluded under Article 6(e) of the Law on Patents.

**30. 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.**

See Articles 6(a) and (g) and Article 7 of the Law on Patents, as well as Article 6 of Regulatory Decree No. 260/96.

**31. 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.**

Plant varieties are protected under the Law on Seeds.

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

They are protected through Article 8 of the Law on Patents. See also WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1 of 19 June 2002, point 4.

**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.**

Argentina provides protection for pharmaceutical and agricultural chemical products through the Law on Patents.

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

Yes. See in this connection document WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1 of 19 June 2002, point 4.

**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 additional conditions in detail.**

Not applicable.

**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.**

Article 36 of the Law on Patents provides for the establishment of limited exceptions to the rights conferred by a patent.

**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.**

Argentine law does provide for compulsory licensing, which is regulated by Articles 42-50 of the Law on Patents.

See also document WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1 of 19 June 2002, point 1.

**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 compulsory licence shall be authorized predominantly for the supply to the domestic market of the Member authorizing such use.**

Argentine law provides for compulsory licensing, which is regulated by Articles 42-50 of the Law on Patents.

See also document WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1 of 19 June 2002, point 1.

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

No.

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

The question is unclear.

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

See document WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1 of 19 June 2002, point 5.

H. PROTECTION OF UNDISCLOSED INFORMATION

**46. 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.**

**47. Please explain how your legislation defines undisclosed information.**

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

Replies to questions 46-48:

See Law 24.766 which covers the provisions of Article 39 of the TRIPS Agreement.

I. ENFORCEMENT

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

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

**51. 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.**

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

**53. 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.**

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

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

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

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

**58. 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.**

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

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

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

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

Replies to questions 49-62:

See Argentina's replies to the Check-list of Issues on Enforcement.

## SWITZERLAND

### A. GENERAL

**1. Are the provisions of the TRIPS Agreement directly applicable in your legal system?**

The requirements relating to international agreements are set forth in Article 31 and Article 75, paragraphs 22 and 24, of the Constitution of the Argentine Republic. Of particular relevance to the TRIPS Agreement are Articles 27 and 31 read together with Article 75, paragraph 22.

### B. PATENTS

**2. Does your legislation grant patent protection to all categories of products or are there any exceptions? If so, please explain in detail what kind of exceptions exist and how they comply with Article 27 of the TRIPS Agreement. In particular, is patent protection granted to all pharmaceutical products?**

Law No. 24.481 amended by Law No. 24.572 (harmonized text 1996), hereinafter the Law on Patents, sets forth the patentability regime in Article 4, and the exceptions in Article 6 and 7.

**3. Does your legislation, in accordance with Article 27.1 in combination with Article 31 of the TRIPS Agreement, consider importation as "working" a patent (and therefore preclude compulsory licensing, if a product is being imported)?**

The basis for the question is unclear.

**4. Please explain how Article 28.2 of the TRIPS Agreement is incorporated in your legal system.**

Chapter V (Transmissibility and contractual licences) of the Law on Patents and Chapter V of Regulatory Decree 260/96 cover this point.

**5. Does your legislation make the granting of a compulsory licence subject to all the conditions enumerated in Article 31 of the TRIPS Agreement? Please cite the relevant provisions of law.**

Chapter VII (Other use without the authorization of the patent holder) of the Law on Patents covers the provisions of Article 31 of the TRIPS Agreement. See also, in this connection, document WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1 of 19 June 2002, point 1.

**6. Please explain how the principle of the reversal of burden of proof in a process patent litigation, as required by Article 34 of the TRIPS Agreement, is implemented in your legislation. Article 88 of Argentinean Law No. 24.481 on Patent and Utility Models sets 1 January 2000 as the date before which a product cannot be considered as new. Please explain how this provision is compatible with Article 70.2 of the TRIPS Agreement.**

See document WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1 of 19 June 2002, point 5.

**7. Please explain whether parallel imports of patented products are permitted by your legislation.**

See Article 36(c) of the Law on Patents and the regulations thereto.

C. PROTECTION OF UNDISCLOSED INFORMATION

**8. Please explain in detail if your legislation ensures that undisclosed test or other data submitted by an applicant to the responsible State agency in the procedure for market authorization of a pharmaceutical or of an agricultural chemical product is protected against disclosure and against unfair commercial use by a competitor, for example by prohibiting a second applicant from relying on, or from referring to the data of the first applicant, when applying subsequently for market authorization for his own product. Does your legislation provide for exceptions to this? If yes, under what conditions would such exceptions apply? Does your legislation set a specific term of protection for undisclosed test or other data of the first applicant?**

The wording of the question does not properly reflect the obligations contained in Article 39 of the TRIPS Agreement. Argentine law in this area is consistent with those obligations.

D. ENFORCEMENT

**9. Please indicate remedies provided by your legislation, which constitute effective deterrents to infringements of intellectual property rights.**

See Argentina's replies to the Check-list of Issues on Enforcement.

**10. Please describe any new initiatives that are planned to improve enforcement of intellectual property rights in your country, particularly initiatives related to criminal enforcement.**

This question does not require an answer, since the review provided for in Article 63.2 of the TRIPS Agreement is confined to legislation in force.

**11. How does your law comply with the requirement of "prompt and effective provisional measures" set in Article 50 of the TRIPS Agreement, in particular for patents? Please cite the relevant laws and provisions.**

See in this connection document WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1 of 19 June 2002, point 6.

E. PROTECTION OF EXISTING SUBJECT-MATTER

Institutional Arrangements; final provisions

**12. Please explain how Article 70.7 of the TRIPS Agreement is implemented in your legislation. What is considered to be "new matter" in your law?**

See in this connection document WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1 of 19 June 2002, point 8(b).

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