

ACCESSION OF ALBANIA

Additional Questions and Replies

Addendum

The following replies to additional questions concerning GATS and TRIPs have been received from the Ministry of Industry, Transport and Trade of the Republic of Albania.

GATS AND TRIPS

Question 1.

Albania should provide detailed information on GATS and TRIPs according to the format set out in WT/ACC/1, consolidating any information already provided on these subjects. The annexed questions on TRIPs should be of help when the paper on that subject is being prepared.

Further information we would like to see provided on services. Details of:

- **regulatory and legislative arrangements;**
- **any market access barriers to foreign participation, including a list of sectors for which foreign participation is not possible;**
- **any service sectors which are only open to foreigners if they form a joint-venture with Albanian private or State-owned companies;**
- **sectors subject to restrictions on modes of supply;**
- **sectors for which entity requirements apply to commercial establishment;**
- **any operating restrictions which apply to foreign companies, for example, the prohibition on branches of foreign banks accepting deposits from natural or juridical or Albanian persons;**
- **any agreements or arrangements for the mutual recognition of professional qualifications;**
- **sectors reserved for State-owned companies and any future plans for allowing private participation;**
- **any limitation on national treatment;**
- **any bilateral economic, technical cooperation or trade agreements which cover trade in services, including details of those which confer preferred or reciprocal supplier status on companies from signatory countries.**

Answer.

Albania has provided to the Working Party an explanatory note on Services (document WT/ACC/ALB/14). This note gives information on the legal regime applicable to services overall and by sectors, as well as comments on the draft schedule regarding national treatment, market access, modes of delivery, etc.

Intellectual Property Rights (document WT/ACC/ALB/4)

General (questions 104 - 105)

Question 2.

Could the Government of Albania provide copies of its laws on industrial property and copyrights as mentioned in WT/ACC/ALB/4? Are there any national laws/regulations etc. on intellectual property? If so, could the Government of Albania provide copies?

Answer.

A copy in English of the Law "On Industrial Property" was provided to the Working Party in April 1996 (document WT/ACC/ALB/6). A copy of the Law "On Copyright" will be provided. The relevant national laws/regulations are as follows:

1. Patents Regulations;
2. Trade and service mark regulation;
3. Industrial Designs Regulation;
4. Appellation of Origin Regulation;
5. Board of Appeals Regulation;
6. Patent and Trademark Attorney Regulation;
7. Government Decree on Industrial Property Tariffs;
8. Patent Office Regulation.

(There is no English version of these laws.)

Question 3.

Is Albania a member of any other international treaty besides the Paris Convention? If yes, which are they?

Answer.

Albania is a member of the following conventions and agreements in intellectual property:

1. Paris Convention;
2. Madrid Agreement on International Registration of Trade Marks;
3. Patents Cooperation Treaty;
4. Cooperation Agreement between the government of Albania and the European Patent Organisation (Extension Agreement).

Question 4.

In what respect does the existing Albanian law not implement the provisions of the TRIPs Agreement as indicated in the second paragraph of the answer to question 105?

Answer.

The Albanian law "On Industrial Property" generally is compatible with the TRIPs Agreement. Some of the TRIPs Agreement provisions are not included in Albanian law, but their preparation is under consideration by the Albanian Government.

Question 5.

Do foreigners enjoy the same treatment as nationals in respect of IPR protection? Are remedies and procedures in conformity with Articles 42-49 of the TRIPs Agreement?

What is the exact regime in relation to the acquisition of intellectual property rights, to which foreigners are subject. Are there any restrictions or limitations for foreigners as regards the acquisition of intellectual property rights? Do any such restrictions also apply to Albanian nationals.

For obtaining intellectual property rights, Albanian law provides the same treatment for foreigners for Albanian nationals, except that the foreign applicants should be represented at the Patent Office through an Albanian patent and trademark agent.

The remedies and procedures included in Albanian law are in conformity with articles 42-49 of the TRIPs Agreement.

Industrial Property Rights

Patents (questions 106-112)

Question 6.

Do current rules in Albania on government use and compulsory/non-voluntary licences for patents comply with the provisions of article 31 of the TRIPs Agreement?

The provisions of Albanian law on government use and compulsory/non-voluntary licences for patents comply with the provisions of Article 31 of the TRIPs Agreement. In the above mentioned article of the TRIPs Agreement there are provisions not included in Albanian law. (See answer to the following question)

Question 7.

In which ways is the obligation to work the patent satisfied? Will the importation of the products incorporating the patented invention satisfy local working?

Answer.

Albanian law does not provide details in which cases the patent invention has not been worked or insufficiently worked in the Republic of Albania, but it is mentioned that the Patent Office does not grant the non-voluntary licence if there certain circumstances exist which justify the non-working or the insufficient working of the patent invention in Albania. It will depend on the circumstances if the importation of the product incorporating the patented invention whether it satisfies the local working.

Question 8.

Could the Government of Albania be more specific about the grounds for exclusion from patentability? E.g., what is meant by "substances obtained through internal nuclear transformation for military purposes? How are plant or animal varieties protected, if not by patents (Art.27.3 (b) TRIPs Agreement)? How does the Albanian Government intend to implement Art. 27.3 of the TRIPs Agreement in general?

Answer.

The exclusions from patentability comply with the modern patents law. Plant or animal varieties are not protected by this law, but the information on this protection has been provided to the questionnaire on import licensing and agriculture information (document WT/ACC/ALB/19). The Albanian law complies with provision 27.3.

Question 9.

Does Albanian law grant patent protection from the date of filing?

Answer.

The Albanian Law on Industrial Property grants patent protection from the date of filing.

Question 10.

Are parties required to seek voluntary licenses from the patentee before they may apply for a compulsory license?

Answer.

Albanian law does not explicitly define whether the parties are required to seek voluntary licenses from the patentee before they may apply for a compulsory license.

Question 11.

Concerning the response to question 109, does importation satisfy the working requirement for patents?

If not, failure to allow imports to satisfy the working requirement would be inconsistent with the prohibition against discrimination in the enjoyment of patent rights based on whether something is imported or domestically produced.

Answer.

The fulfilment of these conditions depends on concrete circumstances such as the price of products, etc.

Semi-conductors (questions 113-114)

Question 12.

In WT/ACC/ALB/4 it is mentioned that Layout-Designs of Integrated Circuits are not protected by Albanian law but that the Government has the intention to work on a protective scheme. Does the Government of Albania already have an idea what its contents will be? If yes, could it give an outline? What would be the approximate time-frame until such a law would be in force?

Will there be any legislation on the protection of layout-designs (topographies) of integrated circuits? Will there be any registration requirements? Which will be the body responsible for these matters? Will the legislation be in full conformity with articles 35-38 of the TRIPs Agreement?

Does Albania plan to regulate the protection of layout-designs?

The response to question 113 indicates that the Government of Albania will prepare an act on the protection of layout designs of integrated circuits.

When will the drafting of legislation be undertaken and when is enactment of legislation expected?

Please submit a copy of the draft legislation to the Secretariat for review by the Working Party.

Answer.

The Albanian Government has under consideration the preparation of a law on layout-design of integrated circuits. There is still no outline, but this preparation will be based on the articles 35-38 of the TRIPs Agreement. The Patent Office will be the responsible body for these matters.

Trademarks

Question 13.

Is the trademark and service mark legislation fully in line with articles 15-21 of the TRIPs Agreement? What are the rights conferred? Is use required in order to obtain and maintain the registration of the mark?

Answer.

Albanian law is in conformity with articles 15-21 of the TRIPs Agreement. The rights conferred by the Albanian legislation regarding trademarks and service marks are included in article 83 of the Albanian law. The use of the trademark is required to maintain the registration of the mark, but not to obtain it.

Question 14.

Could the Albanian Government be more specific about the protection of well-known trademarks?

According to the response to question 126, Albania does not currently provide trade secret protection. When will Albania prepare its law to provide trade secret protection? How will this law be developed? How will the Government of Albania enforce this protection.

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Answer.

A sign is not protected as a trademark when its use is in conflict with the rights of a well-known trademark. The meaning of the well-known trademark given by Albanian law is the same as that given by the Article 6bis of the Paris Convention.

Question 15.

Could Albanian describe the role and duties of a trademark registrar?

Answer.

The main duties of the Patent Office are:

1. Patent Office administers all the procedures for the registration of the trade and service marks;
2. According to the Madrid Agreement registers international trademarks applications;
3. The office publishes the trademark gazette;
4. Provides service information on trademarks;
5. Prepares the trademarks legislation.

Question 16.

In relation to trademarks, the Albanian documentation indicates that a trademark is valid for 10 years and can be renewed for an additional term of 10 years. This implies that after the additional 10 years, the trademark cannot be renewed. The TRIPs Agreement requires that trademarks are renewable indefinitely.

Answer.

The trademark can be renewed every ten years for an unlimited period of time.

Question 17.

In the response to question 116 Albania used the term 'well-known mark'. Please define this term in the context of the Government of Albania's trademark law. Please include under what procedure a mark is considered well-known.

Answer.

The definition of the well-known mark given by Albanian law is in conformity with the definition of article 6bis of the Paris Convention. For the definition of a mark as a well-known one the information of the consumers about the mark will be taken into consideration.

Question 18.

The answer to the previously noted question (116) indicates that well-known marks will not be registered but the explanation in question 118 does not seem to authorize such a refusal. Also no mention is made of the refusal to register a mark that is merely the name of the thing with which the mark is associated. Please clarify how the Government of Albania treats these types of trademarks.

Five years is too long before allowing a mark to be cancelled for non-use. What are Albania's plans to amend the law to shorten the time before a mark can be cancelled for non-use.

Article 15(3) of the TRIPs Agreement provides that a trademark application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application. U.S. law was changed in the Uruguay Round Agreement Act (URAA) from two years to three years of non-use cancellation of a mark to comply with TRIPs.

Answer.

Albania will take into account the amendment of the existing legislation to shorten the time before a mark can be cancelled for non-use.

Industrial Design (questions 123,124)

Question 19.

Is the protection of industrial designs in Albania fully in line with the articles 25-26 of the TRIPs Agreement.

Answer.

Yes. The protection of industrial design in Albania is in line with articles 25-26 of the TRIPs Agreement.

Question 20.

Could the government of Albania clarify more clearly how industrial designs are protected?

Answer.

The Industrial Design is protected by the Albanian law "On Industrial Property". The second part of the law deals with the protection of industrial design. Articles 59, 60, 64, 67, 68 and 70 define the conditions of protection, the right to protection, temporary protection of industrial designs exhibited at international exhibitions, rights conferred by registration and infringement proceedings.

Question 21.

Under the TRIPs Agreement, the minimum term of protection for industrial design is 10 years. In Albania, industrial designs are registered for 5 years and may be renewed twice for a period of 5 years. If there are any conditions on such renewal, this requirement may be in breach of the TRIPs Agreement. More information is needed in relation to the renewal of industrial designs in Albania,

Answer.

Article 68 defines that the registration for industrial designs is made for 5 years counted from the filing date. The registration may be renewed for additional terms of 5 years each up to a total term of 15 years counted from the filing date. There are no conditions for renewal.

Question 22.

How does Albania plan to deal with possible conflicts between copyright and industrial designs protection?

Answer,

According to Albanian legislation the protection of industrial designs does not exclude any other rights provided in the copyright law.

Geographic indications

Question 23.

Are there any registration requirements to protect geographical indications? Is this legislation in accordance with Articles 22-24 of the TRIPs Agreement?

Albania's laws in relation to geographical indications appear to be TRIPs consistent in relation to ordinary goods. However, no information has been provided relating to the additional protection of geographical indications for wines and spirits. In this regard, further information needs to be provided to ensure compliance with the TRIPs Agreement.

Answer.

Albanian legislation has some requirements for the registration of geographical indications. The Albanian law does not provide additional protection for wines and spirits according to article 234 of TRIPs. Concerning article 24 of TRIPs, Albanian law provides for the registration of industrial designs on behalf of a foreign person, on the basis of an international agreement in reciprocal protection of appellation of origin concluded by the Republic of Albania.

Trade Secrets (question 125)

Question 24.

Does the government of Albania intend to introduce a protection of trade secrets?

What are the reasons for Albania not to protect trade secrets? Are there any plans to change this situation?

Answer.

The Albanian law "On Competition" provides for protection of trade secrets.

Competition and Anti-trust (questions 126-127)

Question 25.

How does the Government of Albania intend to implement Art. 40 of the TRIPs Agreement?

Answer.

Albania has not prepared the implementing rules for the law "On Competition".