

WORLD TRADE ORGANIZATION

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

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REVIEW OF LEGISLATION ON ENFORCEMENT

Questions Posed by the United States

By means of a communication from the Permanent Delegation of the United States dated 19 September 1997, the Secretariat has received the following questions that the United States had communicated to Australia, Bulgaria, Canada, the Czech Republic, the European Communities and their Member States, Hungary, Japan, Liechtenstein, Mexico, New Zealand, Norway, Poland, the Slovak Republic, Slovenia, South Africa and Switzerland.

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AUSTRALIA*General Obligations*

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative¹ procedures in Australia in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Australia and cite the legal authorities providing for those differences.
4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Australia to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. Please explain any provisions in the enforcement system in Australia that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or

¹These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Australia's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Australia on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of Australia for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of Australia for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Australia and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of Australia, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of Australia to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement,

please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions

in the law of Australia authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in Australia authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Australia.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Australia for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Australia can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

51. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please explain whether the competent authorities in Australia are empowered to act ex officio and, if so, please identify the intellectual property areas subject to ex officio action.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Australia permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments.

Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Australia.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of Australia that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of Australia that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Australia that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Australia comply with that obligation.

BULGARIA

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative² procedures in Bulgaria in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
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Provisional Measures

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Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in Bulgaria authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

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46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Bulgaria can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

51. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please explain whether the competent authorities in Bulgaria are empowered to act ex officio and, if so, please identify the intellectual property areas subject to ex officio action.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Bulgaria permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments.

Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Bulgaria.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of Bulgaria that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of Bulgaria that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Bulgaria that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Bulgaria comply with that obligation.

CANADA*General Obligations*

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative³ procedures in Canada in which parties can enforce their intellectual property rights, at local, provincial and national levels, explaining the interrelationships, if any, of the various types of courts and administrative bodies. How are any differences in interpretation of laws resolved?
2. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Canada and cite the legal authorities providing for those differences.
3. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Canada to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
4. Please explain any provisions in the enforcement system in Canada that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
7. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.
8. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe any legal limitations placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

³These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

Civil and Administrative Procedures and Remedies

9. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

10. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any requirements imposed on the party to appear personally in a proceeding and cite the legal authorities such requirements.

11. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Canada on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

12. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Canada and cite the legal authorities providing for those limitations.

13. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. In IP/N/6/CAN/1, Canada states that attorney's fees are not normally included in an award of costs and that, when they are awarded, the amount is based upon the days in court only. Please describe the circumstances under which such an order will be given, the factors considered in establishing the expenses.

14. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. In IP/N/6/CAN/1, Canada describes provisions in connection with industrial designs, integrated circuits, trademarks, plant breeders rights, and copyrights. Please describe the additional remedies available in connection with patents and trade secrets and describe the circumstances in which any of these authorities would be exercised and the factors considered in determining the nature of the remedies provided.

15. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. In IP/N/6/CAN/1, Canada states that there is no specific authority for such a remedy. Under the broad inherent discretion granted judges are they able to order that such information be provided right holders in order to enable the latter to enforce their rights? If so, please describe what factors would be considered in determining whether to order such a remedy.

16. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

17. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. In IP/N/6/CAN/1, Canada states that such actions are possible in urgent situations in order to allow for the filing of material. Please describe the conditions that must exist for a court to consider a situation "urgent".

18. Articles 50.2 and 50.8 require Members to authorize judicial authorities and administrative bodies to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. In IP/N/6/CAN/1, Canada verifies that such authority exists. Please describe briefly what factors are considered by authorities to in determining whether "irreparable harm" to the right holder will occur. Likewise, what factors are considered in determining the "balance of convenience".

19. Articles 50.2 and 50.8 also require that Members authorize judicial authorities and administrative bodies to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

20. Articles 50.3 and 50.8 authorize judicial and administrative authorities to require applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence right holders must present to establish ownership.

21. Articles 50.3 and 50.8 require that Members authorize judicial and administrative authorities to order the filing of a security or equivalent assurance to protect the defendant when provisional measures are being requested. Please describe the authority of Canadian judges to require the filing of a security or other assurance when granting provisional relief.

22. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority for notifying affected parties and indicate the period within which parties must be notified.

23. Article 50.4 also requires that the defendant be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Describe briefly the procedures a defendant must follow to initiate review proceedings and indicate the period within which the authorities must act on the request.

24. Articles 50.7 and 50.8 provide that judicial and administrative authorities must have the authority to order an applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please identify the judicial and administrative authorities, on a national and local level, that are authorized to award defendants appropriate compensation for injuries caused by provisional measures and describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

25. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export from Canada of goods suspected of infringing copyrights and/or trademarks.

26. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Canada.
27. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Canada for a description to be "sufficiently detailed".
28. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.
29. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please describe the manner in which parties are notified and the time period within which notification must occur.
30. Article 55 provides that a review of the suspension measures is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure. Please cite the law or regulations providing for these procedures.
31. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please describe the manner in which such compensation can be ordered by the appropriate authorities and the factors considered in deciding on the amount of compensation.
32. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Canada can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc., and cite to the law or regulations providing such authority.
33. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Canada permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.
34. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Canada.

Criminal Procedures

35. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. In IP/N/6/CAN/1, Canada describes the criminal provisions of its intellectual property laws, including those that apply to copyrights, but criminal provisions in connection with trademark counterfeiting are not discussed. Please describe the provisions in the law of Canada that provide for criminal action in connection with trademark counterfeiting.

36. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. IP/N/6/CAN/1 contains information regarding criminal penalties in connection with copyrights but does not discuss trademark counterfeiting. Please explain the provisions in the law of Canada that provide criminal remedies for trademark counterfeiting, describe the circumstances in which those remedies would be imposed and provide legal citations.

37. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Canada comply with that obligation.

CZECH REPUBLIC

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative⁴ procedures in the Czech Republic in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of the Czech Republic and cite the legal authorities providing for those differences.
4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of the Czech Republic to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. Please explain any provisions in the enforcement system in the Czech Republic that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court

⁴These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under the Czech Republic's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of the Czech Republic on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of the Czech Republic for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of the Czech Republic for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of the Czech Republic and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of the Czech Republic, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of the Czech Republic to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute

the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in the law of the Czech Republic authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in the Czech Republic authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in the Czech Republic.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in the Czech Republic for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in the Czech Republic can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

51. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please explain whether the competent authorities in the Czech Republic are empowered to act ex officio and, if so, please identify the intellectual property areas subject to ex officio action.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in the Czech Republic permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of the Czech Republic.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of the Czech Republic that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of the Czech Republic that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of the Czech Republic that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of the Czech Republic comply with that obligation.

EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

Austria

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. In IP/N/6/AUT/1, Austria has stated that competence in respect of disputes involving intellectual property fall within the competence of the commercial court in Vienna, exclusive in the case of patent rights, design protection, semiconductor protection and protection of rights in utility models, and/or in the commercial senates of the respective provincial courts. Please describe in greater detail the judicial bodies in Austria through which parties can enforce their intellectual property rights, and explain the interrelationships, if any, of the various courts. Cite the laws or other authorities establishing each type of court.
2. With respect to copyrights, trademarks, protection of plant varieties, protection of geographical indications, and undisclosed information, please indicate the circumstances that would determine jurisdiction among the commercial courts and commercial senates of the provincial courts and cite the legal authority granting such jurisdiction.
3. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts identified in response to question 1 and cite the legal authorities establishing those procedures.
4. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Austria and cite the legal authorities providing for those differences.
5. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. In IP/N/6/AUT/1, Austria has stated that the party losing an action must remunerate all opponents for all costs incurred during the court proceeding. Please describe the means by which such liability is established and, if possible, provide examples.
6. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. In IP/N/6/AUT/1, the Government of Austria outlines the approximate costs of litigation as based upon the value in dispute. Please describe how the value in dispute is established if, at the end of the day, it is up to the court to award damages, particularly since, if the lawyers' fees are established based upon the value in dispute, the tendency might be to claim a high value in dispute.
7. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. In IP/N/6/AUT/1, states that duration of litigation before provincial courts and the Vienna Commercial Court is between 6 and 18 months. Is this for all types of cases or for intellectual property proceedings in particular?
8. Please explain any provisions in the enforcement system in Austria that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
9. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with

regard to each type of court identified in question 1, whether judges must render their decisions in writing and cite the legal authorities requiring such written opinions.

10. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court identified in question 1, what factors may be considered by a judge in rendering a decision and cite the legal authorities establishing the basis on which judges may reach decisions.

11. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

12. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Austria on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. In IP/N/6/AUT/1, Austria states that there is no procedure for special marking or protection of confidential evidence but that the court can exclude the public ex officio in certain instances and that intellectual property materials cannot be inspected by third parties unless both parties to the proceeding agree. Please describe the means provided under the law of Austria, in any, for parties to request that access be limited to testimony, evidence, or portions of written opinions that might contain confidential information.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. In IP/N/6/AUT/1, Austria identifies certain circumstances in which opponents may refuse to present information. Please explain in greater detail what would have to exist to claim each condition, giving examples where possible.

16. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. In IP/N/6/AUT/1, Austria states that the judge has discretion to determine what, if anything, will be done if a party refuses to produce required information. Please provide examples of sanctions imposed by judges on parties that refused to provide ordered information and indicate under what circumstances those sanctions were imposed.

17. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. In IP/N/6/AUT/1, Austria identifies injunctions as one

of the remedies that can be ordered by judges in infringement cases. Please describe in greater detail the authority of judges in infringement cases to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

18. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Austria and cite the legal authorities providing for those limitations.

19. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. In IP/N/6/AUT/1, Austria states that a judge can order the payment of damages, including the recovery of profits and expenses, including attorney's fees. Please explain the factors considered in establishing the amount of the profits and expenses, not including the attorney's fees, and cite the legal authorities authorizing such compensation orders.

20. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. In IP/N/6/AUT/1, Austria states that a judge can order the payment of damages, including the recovery of profits and expenses, including attorney's fees. Please explain how the amount of attorney's fees authorized is determined, and cite any legal authorities involved.

21. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. In IP/N/6/AUT/1, Austria states that a judge can order destruction or other disposal of infringing goods and materials/implements for their production. Please describe the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

22. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. In IP/N/6/AUT/1, Austria states that there is not right to such information in the instances identified. Please explain any plans the Government of Austria might have to amend its laws to authorize provision of such information as a means to deter infringement of intellectual property rights.

23. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

24. Article 50.1 provides that judicial and administrative authorities shall have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. In IP/N/6/AUT/1, Austria provides considerable detail regarding interim injunctions intended to preserve the rights of the complaining party and to ensure that resources will be available to satisfy any judgment against the defending party. It is not clear whether this authority extends to

the preservation of evidence relevant to proving infringement. Please clarify whether the courts' authority to order interim injunctions includes authority to preserve relevant evidence.

25. Article 50.2 requires Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. In IP/N/6/AUT/1, Austria states that a defendant need not be given the opportunity of commenting on the requested interim injunction prior to its issuance. Please describe the circumstances in which a judge would provide such an opportunity and those in which the judge would determine such an opportunity was not appropriate.

26. Article 50.2 requires Members to authorize judicial authorities and administrative bodies to grant provisional remedies *inaudita altera parte* when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the courts in Austria to establish "irreparable harm" to the right holder.

27. Article 50.3 requires Members to authorize judicial and administrative authorities to require applicants to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent.

- (a) With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required of right holders to establish ownership.
- (b) With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required of right holders to establish that infringement has occurred or is imminent.

28. Articles 50.3 requires that Members authorize judicial authorities to require the applicant to provide a security or equivalent assurance to protect the defendant. In IP/N/6/AUT/1, Austria states that a pecuniary indemnification may be required of the right holder before an interim injunction is issued "in the absence of satisfactory evidence for the claim of an interim injunction". This implies that an interim remedy can be provided even where evidence does not support its grant. Please verify if this understanding is correct and, if not, identify under what circumstances deposit of a security would be required.

29. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. In IP/N/6/AUT/1, Austria states that, if not heard before the grant of an interim injunctions, a defending party may file an objection within 14 days of the grant of the interim injunction. Please describe how the defending party is notified of the grant of the interim injunction and indicate the legal authority for such notice.

30. Article 50.4 also requires that the defendant be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. In IP/N/6/AUT/1, Austria states that an opposition can be filed by the defendant within 14 days. Please indicate under what circumstances a judge might modify or revoke an interim injunction.

31. Article 50.5 requires Members to authorize competent authorities to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information might be required for the identification of goods. Please cite the legal authority establishing the basis for this supplemental information.

32. Article 50.6 provides that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or

otherwise cease to have effect, at the request of the defendant. The statement on page 7 of IP/N/6/AUT/1 regarding execution of an interim injunction is not clear. Please clarify this statement.

33. Article 50.7 requires Members to provide that judicial authorities shall have the authority to order an applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Does the statement on page 4 of IP/N/6/AUT/1 that the party fully losing an action must remunerate all opponents for all costs incurred satisfy this obligation or is there some other provision of Austrian law that is applicable? Please describe and cite any other applicable provision.

Special Requirements Related to Border Measures

34. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. In IP/N/6/AUT/1, Austria explains its implementation of certain related E.C. directives and states that excepted from this suspension for "imitated goods" or "unlawfully manufactured items of duplication" are goods between member states. Please indicate if some other provision is available to right holders to prevent the transfer of counterfeit trademarked goods or pirated copyrighted works being transported from one member of the E.C. to the other, since competence for intellectual property protection generally remains with the Member States.

35. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

36. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Austria.

37. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped and IP/N/6/AUT/1 refers to "a sufficiently precise description of the goods". Please explain what is required of the right holder in Austria for a description to be "sufficiently precise".

38. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

39. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. IP/N/6/AUT/1 refers to the title holder's furnishing a guaranty to cover the liability vis-à-vis a person affected by the measures. What is the amount of the guaranty required and how is it determined?

40. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

41. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please identify the authority/authorities responsible for notifying the importer and applicant and cite to the law or regulations spelling out the procedure followed.
42. Please specify the period within which the competent authority must issue a notice that the release of goods has been suspended.
43. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please verify that the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days are the Vienna Commercial Court or the commercial senates of the respective provincial courts or, if not, identify the body or bodies where such proceedings must be initiated.
44. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Would the authority conducting such a review be the same as that in which the right holder initiated an action or would another review the matter? Please cite the law or regulations providing for these review procedures.
45. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Would such compensation be considered part of the overall costs for which remuneration is provided as referred to on page 4 of IP/N/6/AUT/1? If not, please identify the authority responsible for ensuring compensation of the defending party for injury caused by the unfounded detention of goods and cite to the appropriate section of law.
46. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.
47. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Austria can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.
48. Article 58 specifies procedures to be followed where the competent authorities can act *ex officio*. IP/N/6/AUT/1 indicates that the competent authorities in Austria are not empowered to act *ex officio so far*. (Emphasis added.) Please describe any consideration being given to authorize such *ex officio* action.
49. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. If different from that described in connection with civil litigation in IP/N/6/AUT/1, please explain what the law in Austria permits regarding the disposition of infringing goods held by customs authorities. Please cite to the law or regulations providing such authority.

Criminal Procedures

50. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Austria imply with that obligation.

Belgium

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. In IP/N/6/BEL/1/Rev.1, the Government of Belgium gives a detailed explanation of the jurisdiction of Justices of the Peace and the courts of first instance, and mentions commercial courts. Since the Justices of the Peace have jurisdiction over matters not exceeding a value of approximately \$2000, is it likely there would be many cases handled by them? As a practical matter, where are most intellectual property cases heard, in the courts of first instance or in the commercial courts? Please provide statistics, if possible, showing the number of intellectual property cases handled by each.

2. Does the Court of Appeals referred to in several sections of IP/N/6/BEL/1/Rev.1 hear appeals from both the courts of first instance and the commercial courts? If not, how are any differences in interpretation of intellectual property laws resolved?

3. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each type of the court identified in response to question 1 and cite the legal authorities establishing those procedures.

4. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Belgium and cite the legal authorities providing for those differences.

5. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. In IP/N/6/BEL/1/Rev.1, Belgium states that damages can be awarded aggrieved parties in the event an action is deemed to be frivolous and vexatious. Would the request for such damages be considered during the original proceeding or would a separate action for damages have to be brought by the defendant.

6. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please provide approximate amounts for each of the fees identified in the response to question 8(a) in IP/N/6/BEL/1/Rev.1.

7. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to any legal authorities establishing time limits for judicial and administrative proceedings and briefly describe the limits imposed.

8. Please explain any provisions in the enforcement system in Belgium that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.

9. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with

regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.

10. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

11. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

12. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

13. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Belgium's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

14. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Belgium on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

15. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. In answer to question 4 contained in IP/N/6/BEL/1/Rev.1, the Government of Belgium states that there are no specific provisions regarding protection of confidential information in such proceedings and that judges must, therefore, bear in mind the requirements of Article 42 of the TRIPS Agreement. Please describe the means by which judges and the public have been made aware of the enforcement provisions of the TRIPS Agreement so that the former can apply it where appropriate and the latter can request such treatment for such confidential information.

16. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. In the response to question 3 contained in IP/N/6/BEL/1/Rev.1, Belgium states that a party refusing to provide a document pursuant to a court order may be sanctioned. Please describe the sanctions that may be imposed and cite to the provision of law authorizing them.

17. Information ordered to be produced, referred to in question 16, must be protected if it is confidential. Please describe the means provided under the law of Belgium for protecting such information, if different from that provided in answer to question 4 contained in IP/N/6/BEL/1/Rev.1 and cite the legal authority providing for such protection.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. In IP/N/6/BEL/1/Rev.1, Belgium describes the provisions for suspension orders in connection with copyrights, patents, layout designs, trademarks and industrial designs. Please verify that the general rules discussed in the same answer would apply in actions for enforcement of rights in geographical indications and undisclosed information.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Belgium and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. In IP/N/6/BEL/1/Rev.1, the Government of Belgium identifies the provisions of law that authorize judges to order a party found to be infringing to pay the right holder damages suffered as a result of the infringement. Please explain the factors considered by the courts in determining the amount of the compensation.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. In IP/N/6/BEL/1/Rev.1, the Government of Belgium states that contrary to Article 45, the law of Belgium does not include attorney's fees in the costs that judges may order paid to right holders. Please explain what steps the Government of Belgium is taking to bring its law into conformity with this obligation.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. The description of laws containing such authority in IP/N/6/BEL/1/Rev.1 indicates that the remedy is available where "bad faith" is shown. Please describe the factors considered in determining the whether "bad faith" exists.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. The responses to questions 3 and 5 in IP/N/6/BEL/1/Rev.1 appear to indicate that it is only in connection with trademarks that such information will be made available to a right holder to allow the right holder "to reconstitute the chain of production and distribution of counterfeit objects". Please verify that this is correct and indicate whether any thought is being given to providing similar authority at least in connection with piratical copyrighted works.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. In IP/N/6/BEL/1/Rev.1, Belgium states that the State is liable for the actions of its officials. Please describe the circumstances in which such liability would be found to apply.

Provisional Measures

25. Articles 50.1 and 50.8 provide that judicial and administrative authorities shall have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. The description of the authorities and the procedure in IP/N/6/BEL/1/Rev.1 is thorough but it does not indicate whether such actions can be taken to preserve evidence. Please explain under what circumstances a judge or administrative authority can order provisional measures to preserve evidence and indicate whether the procedure followed differs from that described in IP/N/6/BEL/1/Rev.1.

26. Articles 50.2 and 50.8 require members to authorize judicial authorities and administrative bodies to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. In IP/N/6/BEL/1/Rev.1, the additional phrase "significant damages" is used. Please describe briefly what is required by the authorities to establish "significant damages" to the right holder and to establish "irreparable harm".

27. Articles 50.2 and 50.8 also require Members to authorize judicial authorities and administrative bodies to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed." As noted above it is not clear whether provisional measures are available to preserve evidence. If such is the case, please describe briefly what factors are considered by the competent authorities to determine if there is a "demonstrable risk of evidence being destroyed".

28. Articles 50.3 and 50.8 require Members to authorize judicial and administrative authorities to require applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

29. Articles 50.3 and 50.8 require Members to authorize judicial and administrative authorities to provide a security or equivalent assurance to protect the defendant. Please explain whether a security or equivalent assurance is required when provisional measures are requested and, if so, under what circumstances.

30. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and the period within which such notification takes place.

31. Articles 50.6 and 50.8 require that Members provide for revocation of provisional measures at the request of the defendant if proceedings leading to a decision on the merits of a case are not initiated within a reasonable time. IP/N/6/BEL/1/Rev.1 indicates that provisional measures can be imposed in complete independence of any trial on the merits. Please identify the relevant provisions in your country, with accompanying citations, authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and indicate what would constitute a reasonable time.

32. Articles 50.7 and 50.8 require Members to authorize judicial and administrative authorities to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please indicate whether the appropriate authorities can order such compensation and indicate what factors would be considered in determining what constitutes "appropriate compensation" in a particular case.

Special Requirements Related to Border Measures

33. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Belgium.

34. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Belgium for a description to be "sufficiently detailed".

35. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

36. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

37. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure. Please cite the law or regulations providing for these procedures.

38. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

39. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Belgium can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

40. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Belgium.

Criminal Procedures

41. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Belgium comply with that obligation.

Denmark

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial procedures in Denmark in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicate the jurisdiction of each type of court or administrative body, and explain the interrelationships, if any, of the various types of courts.
2. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Denmark and cite the legal authorities providing for those differences.
3. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Denmark to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
4. Please explain any provisions in the enforcement system in Denmark that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated and cite the legal authorities for such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
8. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.
9. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

10. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

11. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Denmark on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

12. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. In IP/N/6/DNK/1, Denmark states that in the event a party fails to provide evidence the court has ordered be produced, the court can take the failure to produce evidence into account in reaching a conclusion in the case. Please describe what "taking into account" might indicate in connection with the litigation and under what circumstances the court would take action.

13. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Response 5(a) in IP/N/6/DNK/1 discusses provisional injunctions but does not mention permanent injunctions. Please describe authority of the judges and administrative officials to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdictions on a permanent basis.

14. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Denmark and cite the legal authorities providing for those limitations.

15. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Response 5(c) of IP/N/6/DNK/1 states the losing party must pay to the winning party the costs caused by the proceeding. Please identify each of the expenses, including attorney's fees, that would be included in such costs and explain any limitations on those expenses. What factors are considered in determining whether an expense was "necessary for the proceeding."

16. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. In IP/N/6/DNK/1, Denmark states that a court may, "on a concrete basis," impose an obligation on the infringer to supply information on any third parties involved. Please describe in greater detail the authority of judges to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised.

17. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

18. Articles 50.1 and 50.8 provide that judicial and administrative authorities shall have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority establishing those provisional remedies.

19. Articles 50.2 and 50.8 requires that Members authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. Response 11 in IP/N/6/DNK/1 states that courts can impose provisional remedies in absence of the defendant *when the defendant has failed to appear* or can suspend action, depending on the circumstances. This implies that the courts do not have authority to act without having first given notice to the defendant and an opportunity for a hearing, regardless of the urgency of the circumstances. Please explain in detail the authority of the courts to provide temporary relief to a right holder when irreparable harm is likely to result from inaction.

20. Articles 50.2 and 50.8 require Members to authorize judicial authorities and administrative bodies to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. IP/N/6/DNK/1 indicates that such remedies can be issued if the defendant fails to appear and delay is likely to cause "irreparable damage" to the right holder. Please describe briefly what is required by the authorities to establish that "irreparable damage" to the right holder will result from delay.

21. Articles 50.2 and 50.8 also require Members to authorize judicial authorities and administrative bodies to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". IP/N/6/DNK/1 indicates that such remedies can be issued if the defendant fails to appear and there is a likelihood that delay creates a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

22. Articles 50.3 and 50.8 authorize judicial and administrative authorities to require applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

23. Articles 50.3 and 50.8 require that authorities be authorized to provide a security or equivalent assurance to protect the defendant. Please describe what authority courts have to require submission of a security or equivalent assurance to protect the defendant when provisional relief is provided.

24. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

Special Requirements Related to Border Measures

25. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

26. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the

importer, consignee or consignor. If competent authorities in Denmark can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

27. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

28. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Denmark.

Criminal Procedures

29. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Denmark comply with that obligation.

Finland

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative⁵ procedures in Finland in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.

2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.

3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Finland and cite the legal authorities providing for those differences.

4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation

⁵These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

for injury suffered because of such abuse. Please describe the means available under the law of Finland to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.

5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.

6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.

7. Please explain any provisions in the enforcement system in Finland that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.

8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.

9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Finland's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Finland on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of Finland for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of Finland for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Finland and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of Finland, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of Finland to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant

is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in the law of Finland authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in Finland authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Finland.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Finland for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the

importer, consignee or consignor. If competent authorities in Finland can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

51. Article 58 specifies procedures to be followed where the competent authorities can act *ex officio*. Please explain whether the competent authorities in Finland are empowered to act *ex officio* and, if so, please identify the intellectual property areas subject to *ex officio* action.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Finland permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Finland.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of Finland that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of Finland that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Finland that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Finland comply with that obligation.

France

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative⁶ procedures in France in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of France and cite the legal authorities providing for those differences.
4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of France to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. Please explain any provisions in the enforcement system in France that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or

⁶These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under France's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of France on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of France for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of France for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of France and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of France, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of France to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement,

please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions

in the law of France authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in France authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in France.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in France for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in France can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

51. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please explain whether the competent authorities in France are empowered to act ex officio and, if so, please identify the intellectual property areas subject to ex officio action.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in France permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments.

Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of France.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of France that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of France that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of France that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of France comply with that obligation.

Germany

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. In IP/N/6/DEU/1, Germany describes identifies the courts that have jurisdiction over disputes involving intellectual property rights. No reference is made, however, to the protection of undisclosed information. Please describe the judicial and administrative⁷ bodies in Germany with jurisdiction over enforcement actions involving undisclosed information. In addition, please explain the interrelationships of the various types of courts and administrative bodies.

2. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts that is not required of a national or resident of Germany and cite the legal authorities providing for those differences.

3. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial, including provision for adequate compensation for injury suffered because of such abuse. The response to question 7 in IP/N/6/DEU/1 provides for compensation in the event of an incorrect judgement or other executory title of which the other party is aware. Please describe any other means available under the law of Germany to prevent abuse of judicial and administrative procedures and cite the legal authorities for those means.

⁷These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

4. Please explain any provisions in the enforcement system in Germany that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.

5. Article 41.2 addresses, among other things, the cost of judicial enforcement proceedings. IP/N/6/DEU/1 describes the conclusions resulting from a study by the Max Planck Institute for Foreign and International Private Law, which is very informative. Please identify the fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated and cite the legal authorities for such fees.

6. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court, whether judges must render their decisions in writing and cite the legal authorities requiring such written opinions.

7. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

8. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe any legal limitations placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

9. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

10. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Germany on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

11. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. IP/N/6/DEU/1 describes the means of protection for information and documents during the course of a trial, but does not indicate how documentary or physical evidence is protected while in the possession of the court. Please describe the means provided under the law of Germany for parties to identify and have such evidence protected and cite any related legal authorities.

12. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. IP/N/6/DEU/1 describes the injunctive authority of the courts in connection with all forms of intellectual property addressed in Part II of the TRIPS Agreement except for undisclosed information. Please describe the courts' authority to order parties to stop

violations of rights in undisclosed information and to prevent goods resulting from such violations from entering the channels of commerce. In addition, please cite the legal authorities authorizing such actions.

13. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Germany and cite the legal authorities providing for those limitations.

14. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. IP/N/6/DEU/1 describes the authority of the courts to award damages in connection with all forms of intellectual property addressed in Part II of the TRIPS Agreement except for undisclosed information. Please describe the courts' authority to order damages adequate to compensate for the injury caused by violations of rights in undisclosed information. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

15. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. IP/N/6/DEU/1 describes the authority of the courts to order such remedies in connection with all forms of intellectual property addressed in Part II of the TRIPS Agreement except for undisclosed information. Please describe the additional remedies available under the laws of Germany in the event of violations of rights in trade secrets, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

16. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. IP/N/6/DEU/1 describes the authority of the courts to order that such information be disclosed in connection with utility models, plant varieties, trademarks, designs and copyrights. Please describe any authority judges have to order infringers of patents and or rights in undisclosed to identify for right holders third parties involved in the production and distribution of goods or services in violation of such rights and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

17. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

18. Article 50.1 requires that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. IP/N/6/DEU/1 describes the authority of the courts to order such provisional remedies in connection with all forms of intellectual property addressed in Part II of the TRIPS Agreement except for undisclosed information. Please verify that such protection is available to address violations of rights in such information and describe the circumstances in which such orders would be granted.

19. Article 50.2 requires that judicial authorities have the authority to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities to establish "irreparable harm" to the right holder.

20. Article 50.2 also requires that judicial authorities be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

21. Article 50.3 requires that judicial authorities be authorized to require applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

22. Article 50.3 requires that judicial authorities be authorized to provide a security or equivalent assurance to protect the defendant. Please cite the legal authority establishing a security or equivalent assurance.

23. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and specify the time within such notice must occur.

Special Requirements Related to Border Measures

24. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Germany.

25. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. IP/N/6/DEU/1 states that ex officio action is possible in certain circumstances. Please explain in connection with what intellectual property rights ex officio action is possible and describe the circumstances in which it would be available.

26. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Germany.

Criminal Procedures

27. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Germany comply with that obligation.

Greece

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. IP/N/6/GRC/1 provides appears to address primarily copyright law. Please describe the structure of the judicial and administrative⁸ procedures in Greece in which parties can enforce other forms of intellectual property rights included in Part II of the TRIPS Agreement, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Greece and cite the legal authorities providing for those differences.
4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Greece to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. There have been reports of unwarranted delays in civil and criminal actions for the enforcement of intellectual property rights in Greece. Please explain any provisions in the enforcement system that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.

⁸These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Greece's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Greece on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of Greece for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. It has been reported that it is not possible in Greece for a right holder to obtain through such judicial or administrative order certain business records indicating the scope of a copyright pirate's profits, necessary to substantiate the right holder's claims with respect to damages. Please state whether that is the case and, if so, explain the manner in which Greek law conforms to the obligations of Article 43.1 of the TRIPS Agreement.

17. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of Greece for protecting such information

and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

18. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

19. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

20. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Greece and cite the legal authorities providing for those limitations.

21. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

22. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

23. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of Greece, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

24. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of Greece to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

25. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials

from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

27. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement. Please cite the relevant legal authority establishing those provisional remedies.

28. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte*. Please cite the relevant legal authority granting authorities this power.

29. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

30. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

31. Articles 50.1, 50.2, and 50.8 require that competent authorities be authorized to order prompt and effective measures to prevent an infringement of any intellectual property right and to preserve relevant evidence in regard to the alleged infringement. Is the authority to order prompt and effective remedies enforced without discrimination based on the nationality of the right holder. If not, please identify the differences pertaining to foreign parties seeking provisional remedies and cite accompanying legal authority.

32. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

33. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

34. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

35. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

36. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

37. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in Greek law authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

38. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

39. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. IP/N/6/GRC/1 states that EC Regulations Nos. 3295/94 and 1367/95 have been implemented in Greece. Please identify the competent authority in Greece authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

40. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

41. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks, even if they are not considered counterfeit trademarked goods or piratical copyrighted works.

42. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Greece.

43. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Greece for a description to be "sufficiently detailed".

44. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

45. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

46. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify forms of intellectual property other than trademarks and copyrights that are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

47. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please identify the authority/authorities responsible for notifying the importer and applicant and cite to the law or regulations spelling out the procedure.

48. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

49. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

50. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure. Please cite the law or regulations providing for these procedures.

51. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the law or regulations providing that authority.

52. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

53. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Greece can provide information regarding

the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

54. Article 58 specifies procedures to be followed where the competent authorities can act *ex officio*. Please explain whether the competent authorities in Greece are empowered to act *ex officio* and, if so, please identify the intellectual property areas subject to *ex officio* action.

55. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Greece permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

56. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

57. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Greece.

Criminal Procedures

58. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. IP/N/6/GRC/1 provides information regarding copyright and related rights. Please describe the provisions in the law of Greece that fulfill the obligations of Article 61 in relation to trademarks and provide legal citations.

59. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. IP/N/6/GRC/1 provides information regarding copyright and related rights. Please explain the provisions in the law of Greece that provide for such remedies in relation to trademarks, describe the circumstances in which those remedies would be imposed and provide legal citations.

60. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Greece that provide for such procedures and remedies and provide legal citations.

61. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under Greek laws comply with that obligation.

Ireland

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. IP/N/6/IRL/1 and Add.1 contain information on the courts with jurisdiction over cases involving all forms of intellectual property but undisclosed information. Please describe the structure of the judicial and administrative procedures in Ireland in which parties can enforce rights in undisclosed information, at local, provincial and national levels.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified that is not required of a national or resident of Ireland and cite the legal authorities providing for those differences.
4. Article 41.1 of the TRIPS Agreement requires establishment of safeguards against abuse of enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Ireland to prevent abuse of judicial procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Please explain any provisions in the enforcement system in Ireland that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
6. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. IP/N/IRL/1 and Add.1 indicate that the cost and time vary depending on the type of case. Please describe any fees charged for filing legal actions involving intellectual property in court or for pursuing such actions once initiated and cite the legal authorities for such fees.
7. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any specific time limits for judicial proceedings.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court, whether judges must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please identify the factors that may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials reach decisions.
10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of intellectual property enforcement proceedings brought against them. Please describe the procedures followed for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Ireland on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

13. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during intellectual property enforcement proceedings. IP/N/6/IRL/1 and Add.1 indicate that hearings or portions thereof can take place in private when it is in the interests of justice to do so. Please describe any other means provided under the law of Ireland for parties to identify and have protected confidential information required to be presented in order to prove their claims, such as non-disclosure orders directed to the attorneys and parties present during a hearing, and cite the legal authorities providing such protection.

14. Article 43.1 of the TRIPS Agreement requires that judicial officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. IP/N/6/IRL/1 and Add.1 state that courts can issue subpoenas or order discovery of documents. Please verify that such authority exists in cases involving undisclosed information.

15. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

16. Article 44.2 provides an exception to the requirement regarding injunctions, in paragraph 1, for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Ireland and cite the legal authorities providing for those limitations.

17. Article 45.2 requires that judges be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

18. IP/N/6/IRL/1 and Add.1 refer to "any other remedies" in the lists of remedies provided in answer to question 5. Please describe what these additional remedies might be, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

19. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

20. Articles 50.2 require that judicial authorities be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required to establish "irreparable harm" to the right holder.

21. Articles 50.2 also require that judicial authorities be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

22. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

23. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed for notifying affected parties and state the time within which such notice must take place.

24. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings and identify the period within which such proceedings must be initiated.

25. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

26. Articles 50.6 provides that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities will be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in Irish law authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

Special Requirements Related to Border Measures

27. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

28. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Ireland.

29. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Ireland for a description to be "sufficiently detailed".

30. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.
31. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.
32. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please identify the authority/authorities responsible for notifying the importer and applicant and cite to the law or regulations spelling out the procedure.
33. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.
34. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.
35. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please identify the types of intellectual property subject to ex officio action.
36. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Ireland.

Criminal Procedures

37. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Ireland comply with that obligation.

Italy

General Obligations

1. Article 41.1 of the TRIPS Agreement requires that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. IP/N/6/ITA/1 states that the pretore and the Courts have jurisdiction over intellectual property cases. Please describe the structure of the judicial bodies in Italy in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court and explain the interrelationships, if any, of the various bodies.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts identified in response to question 1 and cite the legal authorities establishing those procedures.

3. Please identify any requirement that a foreign party must meet to initiate a proceeding that is not required of a national or resident of Italy and cite the legal authorities providing for those differences.
4. Article 41.1 of the TRIPS Agreement requires establishment of safeguards against abuse of judicial procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Italy to prevent abuse of judicial procedures or to remedy damages suffered as a result of such abuse.
5. Please explain any provisions in the enforcement system in Italy that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
6. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged for filing legal actions involving intellectual property or for pursuing such actions once initiated and cite the legal authorities for such fees.
7. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite the legal authorities establishing any time limits for judicial proceedings.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court identified in question 1, whether judges must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court, what factors may be considered by a judge in rendering a decision and cite the appropriate legal authorities.
10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of intellectual property enforcement proceedings brought against them. Please describe the procedures followed for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.
12. Article 42 also requires that parties to intellectual property enforcement proceedings must not be subject to overly burdensome requirements to appear personally. Please describe any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities imposing such requirements.
13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Italy on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during intellectual property enforcement proceedings. IP/N/6/ITA/1 includes a paragraph regarding protection of confidential information and citations to two provisions of Italy's Code of Civil Procedure. Please describe what judges can do to ensure that confidential information that must be presented in court to substantiate claims is protected against disclosure both during the litigation and after the litigation is over.

15. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

16. Article 44.1 requires that judicial officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. IP/N/6/ITA/1 refers to the possibility of an injunction as a "provisional" decision in connection with trademarks or patents. Please describe authority of the judges officials to stop infringements and to prevent infringing goods protected by other forms of intellectual property from entering the channels of commerce and cite the legal authorities authorizing such actions. Also please clarify whether the statement in IP/N/6/ITA/1 means that permanent injunctions are not available. If the latter is the case, please explain in what manner the law of Italy conforms with Article 44.1 of the TRIPS Agreement.

17. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Italy and cite the legal authorities providing for those limitations.

18. Article 45.1 requires that judicial officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. IP/N/6/ITA/1 refers to damages authorized in connection with copyrights, trademarks, and patents. Please describe the authority of the judges to order a party found to be infringing other forms of intellectual property required to be protected under the TRIPS Agreement to pay the right holder damages adequate to compensate for the injury caused by the infringement. If judges are not authorized to order damages in connection with other forms of intellectual property, please explain in what manner the law of Italy conforms with Article 45.1 of the TRIPS Agreement.

19. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. IP/N/6/ITA/1 refers to this possibility only in connection with copyright infringement. Please describe the authority of the judges to order payment of right holders' expenses in cases involving other forms of intellectual property, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments. If the judges are not authorized to order payment of a right holder's expenses in appropriate cases, please explain in what manner the law of Italy conforms with Article 44.1 of the TRIPS Agreement.

20. Article 46 requires that judges be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. IP/N/6/ITA/1 refers to this remedy only in connection with copyrights and trademarks. Please describe the additional remedies available under the laws of Italy in connection with other forms of intellectual property, the circumstances in which such authority will be exercised, the factors considered in determining the nature

of the remedies provided, and cite the legal authorities providing for such remedies. If these remedies are not available in connection with other forms of intellectual property, please explain in what manner the law of Italy conforms with Article 44.1 of the TRIPS Agreement.

21. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

22. Article 50.1 requires that judicial authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. IP/N/6/ITA/1 indicates that provisional measures are available only in connection with copyrights, trademarks, and patents. With respect to other intellectual property rights identified in Article 1.2 of the TRIPS Agreement, please identify the provisional measures available to protect intellectual property rights and cite the relevant legal authority establishing those provisional remedies. If such remedies are not available, please explain in what manner the law of Italy conforms with Article 44.1 of the TRIPS Agreement.

23. Article 50.1 requires that judicial authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement. Please cite the relevant legal authority establishing those provisional remedies.

24. Articles 50.2 requires Members to authorize judicial authorities to adopt provisional measures *inaudita altera parte*. IP/N/6/ITA/1 indicates that such authorization applies only to copyright. With respect to other intellectual property rights identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority. If such procedures are not available, please explain in what manner the law of Italy conforms with Article 44.1 of the TRIPS Agreement.

25. Article 50.2 requires that judicial authorities be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required under the law of Italy to establish "irreparable harm" to the right holder.

26. Article 50.2 also requires that judicial authorities be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

27. Article 50.3 requires that judicial authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

28. Article 50.3 requires that judicial authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

29. Article 50.4 requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings and identify the period within which such proceedings must be initiated.

30. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

31. Articles 50.6 provides that if proceedings leading to a decision on the merits is not initiated within a reasonable time, provisional remedies granted by competent authorities will be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in Italy's law authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

32. Article 50.7 provides that judicial authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

33. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Italy.

34. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Italy for a description to be "sufficiently detailed".

35. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

36. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

37. Article 57 also provides that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Italy can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing

information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

Criminal Procedures

38. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Italy comply with that obligation.

Luxembourg

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative⁹ procedures in Luxembourg in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.

2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.

3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Luxembourg and cite the legal authorities providing for those differences.

4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Luxembourg to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.

5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.

6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.

7. Please explain any provisions in the enforcement system in Luxembourg that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.

⁹These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.

9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Luxembourg's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Luxembourg on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of Luxembourg for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of Luxembourg for protecting such

information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Luxembourg and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of Luxembourg, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of Luxembourg to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials

from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in the law of Luxembourg authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in Luxembourg authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Luxembourg.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Luxembourg for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.
45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.
46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.
47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.
48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.
49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.
50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Luxembourg can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.
51. Article 58 specifies procedures to be followed where the competent authorities can act *ex officio*. Please explain whether the competent authorities in Luxembourg are empowered to act *ex officio* and, if so, please identify the intellectual property areas subject to *ex officio* action.
52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Luxembourg permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Luxembourg.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of Luxembourg that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of Luxembourg that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Luxembourg that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Luxembourg comply with that obligation.

Netherlands

General Obligations

1. In IP/N/6/NLD/1, in the response to question 2, the Government of the Netherlands provides information with regard to enforcement of copyrights and patents but not with regard to other forms of intellectual property. Please state with regard to trademarks, geographical indications, industrial designs, integrated circuit layout designs, and undisclosed information, which persons have standing to assert rights and cite to the relevant provisions of law or regulation.

2. Please identify any requirement that a foreign party must meet to initiate a proceeding that is not required of a national or resident of the Netherlands and cite the legal authorities providing for those differences.

3. Please explain any provisions in the enforcement system in the Netherlands that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.

4. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. IP/N/6/NLD/1 notes that all court decisions must be motivated, stating the grounds for the decision in full. Please state whether judges or administrative officials must render their decisions in writing, give the time limit, if any, for rendering such decisions, and cite the legal authorities requiring such written opinions.

Civil and Administrative Procedures and Remedies

5. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

6. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. IP/N/6/NLD/1 states that care is taken not to require parties "to divulge trade secrets *which are not relevant to the case*" (emphasis added), which implies that trade secrets relevant to the case will have to be divulged. Please describe the means provided under the law of the Netherlands for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

7. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. IP/N/6/NLD/1 does not discuss the consequences if a party appearing in a witness hearing refuses to answer questions put by the court. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

8. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of the Netherlands and cite the legal authorities providing for those limitations.

9. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

10. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required of right holders to establish ownership.

Special Requirements Related to Border Measures

11. IP/N/6/NLD/1 states that amendments to the laws of the Netherlands are in preparation to implement Regulation 3295/94 of the Council of the European Communities. Please explain the status of the implementation and provide a description of the border measures that will be put in place.

Criminal Procedures

12. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of the Netherlands comply with that obligation.

Portugal***General Obligations***

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative¹⁰ procedures in Portugal in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.

2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.

3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Portugal and cite the legal authorities providing for those differences.

4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Portugal to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.

5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.

6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.

7. Please explain any provisions in the enforcement system in Portugal that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.

8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or

¹⁰These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.

9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Portugal's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Portugal on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of Portugal for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of Portugal for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Portugal and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of Portugal, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of Portugal to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

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31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

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the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in the law of Portugal authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in Portugal authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Portugal.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Portugal for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Portugal can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

51. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please explain whether the competent authorities in Portugal are empowered to act ex officio and, if so, please identify the intellectual property areas subject to ex officio action.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Portugal permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Portugal.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of Portugal that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of Portugal that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Portugal that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Portugal comply with that obligation.

Spain

General Obligations

1. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in the courts and cite the legal authorities establishing those procedures.

2. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts that is not required of a national or resident of Spain and cite the legal authorities providing for those differences.

3. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Spain to prevent abuse of judicial procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.

4. Please explain any provisions in the enforcement system in Spain that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.

5. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state whether judges must render their decisions in writing and cite the legal authorities requiring such written opinions.

6. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

7. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

8. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means by which judges ensure the protection of confidential information, oral or written, in relation to each authority referenced in IP/N/6/ESP/1.

9. Article 43.2 provides that, in the event a party refuses to provide information as ordered by judicial officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

10. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Spain and cite the legal authorities providing for those limitations.

11. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. IP/N/6/ESP/1 indicates that Spanish judges have such authority. Please describe the circumstances in which this authority would be exercised.

12. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

13. Article 50.3 requires that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

Special Requirements Related to Border Measures

14. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

15. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention and cite to the applicable law or regulations.

16. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

17. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Spain can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc.

18. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Spain.

Criminal Procedures

19. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Spain comply with that obligation.

Sweden***General Obligations***

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. IP/N/6/SWE/1 describes jurisdiction in relation to copyright, patent, trademark, and industrial design cases. Please state whether the same jurisdiction applies in connection with geographical indications, integrated-circuit layout designs, and rights in undisclosed information and, if not, describe identify the courts that are responsible for infringement actions in relation to those rights.

2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in the courts.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts that is not required of a national or resident of Sweden and cite the legal authorities providing for those differences.
4. Please explain any provisions in the enforcement system in Sweden that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
5. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state whether judges must render their decisions in writing and cite the legal authorities requiring such written opinions.

Civil and Administrative Procedures and Remedies

6. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.
7. Article 43.2 provides that, in the event a party refuses to provide information ordered by judicial officials, those officials may be authorized to make preliminary and final determinations adverse to that party. IP/N/6/SWE/1 states that fines can be imposed in the event a person fails to produce a document ordered by the court. May judges order parties to provide information not contained in a document and have the authority to make determinations adverse to the party refusing to provide information or documents?
8. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Sweden and cite the legal authorities providing for those limitations.

Provisional Measures

9. Article 50.1 require that judicial authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. IP/N/6/SWE/1 describes the authority which exists to prevent further infringement or to preserve assets that might be needed to satisfy a judgment. Please identify any provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.
10. Article 50.3 requires that judicial authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.
11. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

Special Requirements Related to Border Measures

12. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Sweden.

13. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

14. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Sweden.

Criminal Procedures

15. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Sweden comply with that obligation.

United Kingdom

General Obligations

1. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 of the "Checklist" and cite the legal authorities establishing those procedures.

2. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies that is not required of a national or resident of the United Kingdom and cite the legal authorities providing for those differences.

3. Please explain any provisions in the enforcement system in the United Kingdom that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.

4. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.

5. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.

Civil and Administrative Procedures and Remedies

6. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by courts for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

7. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. IP/N/6/GBR/1 indicates that failure to produce documents is treated as contempt of court. Please state whether authorities may make determinations adverse to a party that refused to provide ordered information and under what circumstances such a sanction might be imposed.

8. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of the United Kingdom and cite the legal authorities providing for those limitations.

Provisional Measures

9. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

Special Requirements Related to Border Measures

10. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

11. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

12. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

13. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of the United Kingdom.

Criminal Procedures

14. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of the United Kingdom comply with that obligation.

HUNGARY

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative¹¹ procedures in Hungary in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Hungary and cite the legal authorities providing for those differences.
4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Hungary to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. Please explain any provisions in the enforcement system in Hungary that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or

¹¹These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Hungary's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Hungary on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of Hungary for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of Hungary for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Hungary and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of Hungary, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of Hungary to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement,

please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions

in the law of Hungary authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in Hungary authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Hungary.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Hungary for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.
46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.
47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.
48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.
49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.
50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Hungary can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.
51. Article 58 specifies procedures to be followed where the competent authorities can act *ex officio*. Please explain whether the competent authorities in Hungary are empowered to act *ex officio* and, if so, please identify the intellectual property areas subject to *ex officio* action.
52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Hungary permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.
53. Please identify:
- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
 - (b) the competent authority that carries out the destruction or disposal of the goods.
54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments.

Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Hungary.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of Hungary that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of Hungary that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Hungary that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Hungary comply with that obligation.

JAPAN

General Obligations

1. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 of the "Checklist of Issues on Enforcement" and cite the legal authorities establishing those procedures.
2. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Japan and cite the legal authorities providing for those differences.
3. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Japan to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
4. Please explain any provisions in the enforcement system in Japan that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
5. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
6. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please explain what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.
7. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

8. Article 42 requires that defendants be notified of enforcement proceedings brought against them. Please describe the procedures followed by courts for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.
9. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Japan on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.
10. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during intellectual property enforcement proceedings. In IP/N/6/JPN/1, Japan states that "there are no circumstances under which confidential information may be required to be

produced" and therefor protection for confidential information is assured. In many cases, however, parties must provide financial information, for example, to show the extent of harm or must provide technical information to prove the existence of a trade secret. Such information must be protected in accordance with Article 42. Please describe the means provided under the law of Japan for parties to identify such information and have it protected.

11. Article 43.1 of the TRIPS Agreement requires that judicial officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. In IP/N/6/JPN/1, Japan states that parties may refuse to produce documents that a judge has ordered them to produce if such party has "legitimate reasons". Please describe what are considered "legitimate reasons".

12. Article 44.1 requires that judicial officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. In IP/N/6/JPN/1, Japan identifies provisions for injunctions in connection with patents, trademarks, industrial designs, copyrights, and integrated circuit layout designs. Please describe authority of the judges to order parties to stop violations of rights in undisclosed information and to prevent goods resulting from such violations from entering the channels of commerce, citing the relevant legal authorities.

13. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Japan and cite the legal authorities providing for those limitations.

14. Article 45.1 requires that judicial officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. In IP/N/6/JPN/1, Japan identifies provisions for damages in connection with patents, trademarks, industrial designs, copyrights, and integrated circuit layout designs. Please describe authority of the judges to order parties to compensate for violations of rights in undisclosed information and to prevent goods resulting from such violations from entering the channels of commerce, citing the relevant legal authorities. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

15. Article 45.2 requires that judges be authorized to order payment of a right holder's expenses, including legal fees. In IP/N/6/JPN/1, Japan states that court costs are borne by the losing party. Please describe the factors considered in establishing such costs, indicate whether lawyers' fees are included, and cite the legal authorities authorizing such payments.

16. Article 46 requires that judges officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. In IP/N/6/JPN/1, Japan identifies provisions for such other remedies in connection with patents, trademarks, industrial designs, copyrights, and integrated circuit layout designs. Please describe authority of the judges to order such remedies in connection with violations of rights in undisclosed information and to prevent goods resulting from such violations from entering the channels of commerce, citing the relevant legal authorities. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

17. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their

responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

18. Article 50.2 requires that judicial authorities be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities to establish "irreparable harm" to the right holder.

19. Article 50.2 also requires that judicial authorities be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

20. Article 50.3 requires that judicial authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right, please describe the evidence required by right holders to establish ownership.

21. Article 50.3 requires that judicial authorities be authorized to provide a security or equivalent assurance to protect the defendant. Do judges in Japan have such authority and under what circumstances do they exercise it?

22. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed for notifying affected parties and state the time within which such notice must take place.

23. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings and identify the period within which such proceedings must be initiated.

24. Article 50.6 provides that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in the law of Japan authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

Special Requirements Related to Border Measures

25. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

26. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Japan.

27. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority

responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

28. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

29. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Japan.

Criminal Procedures

30. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Japan comply with that obligation.

LIECHTENSTEIN

General Obligations

1. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts identified in response to question 1 in IP/N/6/LIE/1 and cite the legal authorities establishing those procedures.
2. Please identify any requirement that a foreign party must meet to initiate an enforcement proceeding in the courts that is not required of a national or resident of Liechtenstein and cite the legal authorities providing for those differences.
3. Please explain any provisions in the enforcement system in Liechtenstein that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
4. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state whether judges must render their decisions in writing and cite any legal authorities requiring such written opinions.
5. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please describe what factors may be considered by a judge in rendering a decision and cite the legal authorities establishing the basis on which judges may reach decisions.
6. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

7. Article 42 requires that defendants be notified of intellectual property enforcement proceedings brought against them. Please describe the procedures followed for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.
8. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. In IP/N/6/LIE/1, Liechtenstein indicates that such means are not actually available in proceedings in Liechtenstein. Please indicate in what way the law of Liechtenstein conforms to the requirements of Article 42.
9. Article 43.1 of the TRIPS Agreement requires that judicial officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. IP/N/6/LIE/1 lists a number of exceptions, several of which seem very broad. Please describe in greater detail, giving examples, what is included in each of the exceptions.

10. Article 44.1 requires that judicial officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. IP/N/6/LIE/1 describes the remedies available in connection with copyright, but does not address the other forms of intellectual property covered in Part II of the TRIPS Agreement. Please describe authority of the judges to order parties to stop infringements and other violations of intellectual property rights and to prevent infringing goods from entering the channels of commerce, providing the legal citations.

11. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Liechtenstein and cite the legal authorities providing for those limitations.

12. Article 45.1 requires that judicial officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. IP/N/6/LIE/1 describes the remedies available in connection with copyright, but does not address the other forms of intellectual property covered in Part II of the TRIPS Agreement. Please describe the authority of the judges to order a party found to be infringing or otherwise violating intellectual property rights to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

13. Article 46 requires that judges be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. IP/N/6/LIE/1 describes the remedies available in connection with copyright, but does not address the other forms of intellectual property covered in Part II of the TRIPS Agreement. Please describe the additional remedies available under the laws of Liechtenstein, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

14. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

15. Article 50.2 requires that judicial authorities be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". IP/N/6/LIE/1 refers to the grant of interim injunctions "if and when it is to be anticipated that in their absence the prosecution ... of the claim in question might be rendered very difficult or altogether impossible". It is not clear if this includes the issue of injunctions in order to prevent the destruction of evidence. Please state whether such interim injunctions are available to protect evidence and describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

16. Article 50.3 requires that judicial authorities be authorized to provide for a security or equivalent assurance to protect the defendant. Do the judicial authorities in Liechtenstein have such authority and, if so, please cite the applicable law or regulation.

Special Requirements Related to Border Measures

17. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

18. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

19. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

20. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Liechtenstein can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

21. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Liechtenstein permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

22. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Liechtenstein.

Criminal Procedures

23. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Liechtenstein comply with that obligation.

MEXICO

The questions of the United States addressed to the Government of Mexico consist of the checklist of issues on enforcement (document IP/C/5).

NEW ZEALAND

General Obligations

1. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts identified in IP/N/6/NZL/1 and cite the legal authorities establishing those procedures.
2. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts that is not required of a national or resident of New Zealand and cite the legal authorities providing for those differences.
3. Article 41.1 of the TRIPS Agreement requires establishment of safeguards against abuse of judicial enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of New Zealand to prevent abuse of judicial procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
4. Please explain any provisions in the enforcement system in New Zealand that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings.
7. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court identified in IP/N/6/NZL/1, whether judges must render their decisions in writing and cite the legal authorities requiring such written opinions.

Civil and Administrative Procedures and Remedies

8. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.
9. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

Provisional Measures

10. Article 50.2 requires that judicial authorities be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities to establish "irreparable harm" to the right holder.

Special Requirements Related to Border Measures

11. Article 57 requires *inter alia* that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in New Zealand can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc.

Criminal Procedures

12. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of New Zealand comply with that obligation.

NORWAY

General Obligations

1. Article 41.1 of the TRIPS Agreement requires that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. In IP/N/6/NOR/1, Norway states that all courts except the conciliation board have jurisdiction over intellectual property enforcement cases. Please describe the court structure for the judicial procedures in Norway in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court and explaining the interrelationships, if any.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts identified in answer to question 1 that is not required of a national or resident of Norway and cite the legal authorities providing for those differences.
4. Please explain any provisions in the enforcement system in Norway that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state whether judges must render their decisions in writing and cite the legal authorities requiring such written opinions.
7. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please identify the factors that may be considered by a judge in rendering a decision.
8. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

9. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.
10. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial officials to be produced, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that

refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

11. Article 44.1 requires that judicial officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce. IP/N/6/NOR/1 explains that the effect of a legal determination that a defendant has no right to carry out activities that are infringing, combined with the possibility of criminal action, has the same effect as an injunction. The description of criminal actions available does not indicate that criminal actions are possible in connection with violations in relation to rights in undisclosed information. Please describe how activities that violate such rights can be remedied as required by Article 44.1.

12. Other remedies required by the TRIPS Agreement for violations of intellectual property rights described in IP/N/NOR/1 also do not include references to violations of rights in undisclosed information. Please describe how such remedies are provided under Norway's laws.

13. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Norway and cite the legal authorities providing for those limitations.

14. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

15. Article 50.3 requires that judicial authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. Please describe the evidence required by right holders to establish ownership of each form of intellectual property covered by Part II of the TRIPS Agreement.

Special Requirements Related to Border Measures

16. The TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. IP/N/6/NOR/1, dated September 1996, states that Norway is reviewing the laws and regulations relating to border measures to ensure conformity with the TRIPS Agreement. Please give the status of the review and describe the manner in which the laws and regulations of Norway comply with the obligations contained in Articles 51 through 59 of the TRIPS Agreement.

Criminal Procedures

17. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Norway comply with that obligation.

POLAND

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative¹² procedures in Poland in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Poland and cite the legal authorities providing for those differences.
4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Poland to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. Please explain any provisions in the enforcement system in Poland that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or

¹²These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Poland's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Poland on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of Poland for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of Poland for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Poland and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of Poland, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of Poland to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement,

please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions

in the law of Poland authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in Poland authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Poland.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Poland for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Poland can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

51. Article 58 specifies procedures to be followed where the competent authorities can act *ex officio*. Please explain whether the competent authorities in Poland are empowered to act *ex officio* and, if so, please identify the intellectual property areas subject to *ex officio* action.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Poland permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments.

Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Poland.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of Poland that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of Poland that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Poland that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Poland comply with that obligation.

SLOVAK REPUBLIC

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative¹³ procedures in the Slovak Republic in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of the Slovak Republic and cite the legal authorities providing for those differences.
4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of the Slovak Republic to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. Please explain any provisions in the enforcement system in the Slovak Republic that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court

¹³These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under the Slovak Republic's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of the Slovak Republic on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of the Slovak Republic for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of the Slovak Republic for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of the Slovak Republic and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of the Slovak Republic, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of the Slovak Republic to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.
26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.
27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.
28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.
29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".
30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.
31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.
32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.
33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.
34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute

the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in the law of the Slovak Republic authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in the Slovak Republic authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in the Slovak Republic.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in the Slovak Republic for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.
45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.
46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.
47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.
48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.
49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.
50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in the Slovak Republic can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.
51. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please explain whether the competent authorities in the Slovak Republic are empowered to act ex officio and, if so, please identify the intellectual property areas subject to ex officio action.
52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in the Slovak Republic permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of the Slovak Republic.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of the Slovak Republic that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of the Slovak Republic that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of the Slovak Republic that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of the Slovak Republic comply with that obligation.

SLOVENIA

General Obligations

1. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in the courts identified in response to question 1 of the "Checklist of Issues on Enforcement".
2. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts that is not required of a national or resident of Slovenia.
3. Article 41.1 of the TRIPS Agreement requires establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Slovenia to prevent abuse of judicial procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
4. Please explain any provisions in the enforcement system in Slovenia that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
5. Article 41.2 addresses, among other things, the cost of judicial proceedings. Please describe any fees charged by judicial officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state whether judges must render their decisions in writing and cite the legal authorities requiring such written opinions.
7. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please identify the factors that may be considered by a judge in rendering a decision.

Civil and Administrative Procedures and Remedies

8. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.
9. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. In IP/N/6/SVN/1, the Government of Slovenia explains that courts may exclude the public from court hearings and warn the parties to respect the confidential nature of information received at hearings. Please describe the manner in which a party that failed to respect the confidential nature of information received at hearings.
10. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Slovenia and cite the legal authorities providing for those limitations.

11. Article 47 provides that WTO Members may authorize judges to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. In IP/N/6/SVN/1, the Government of Slovenia explains the manner in which a right holder may demand that persons involved in copyright infringement provide information and documents. Please describe any authority judges have under the laws of Slovenia to order infringers to identify for right holders those third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please describe any similar authority in connection with other forms or intellectual property.

12. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

13. Article 50.2 requires Members to authorize judicial authorities to adopt provisional measures *inaudita altera parte*. IP/N/6/SVN/1 states that such action can be taken in industrial property cases "in urgent cases". Please describe briefly the circumstances that would be considered "urgent," providing examples.

14. Article 50.3 requires that judicial authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

Special Requirements Related to Border Measures

15. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. IP/N/6/SVN/1 describes procedures for pirated copyright goods and says that otherwise the TRIPS Agreement applies directly. If this means that border enforcement in connection with counterfeit trademarked goods is not addressed directly in national law, please explain how the competent authorities are designated in Slovenia, since the TRIPS Agreement does not specify particular authorities. Please describe any plans to amend national legislation to implement border measures in connection with counterfeit trademarked goods.

16. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Slovenia.

Criminal Procedures

17. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. IP/N/6/SVN/1 describes the provisions and the penalties. In relation to copyright, the document describes an intent element, i.e., that the party have the intent "to obtain ... a substantial unlawful material gain".

Please explain how that element is interpreted and provide examples of what would be considered a "substantial unlawful material gain".

18. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. IP/N/6/SVN/1 does not indicate that seizure, forfeiture, and the destruction of infringing goods and materials and implements for commission of the offense are available in connection with trademark counterfeiting and confiscation is referred to in connection with various copyright violations. Please describe the circumstances in which a judge would order seizure, forfeiture and destruction of infringing goods and any materials and implements.

19. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Slovenia comply with that obligation.

SOUTH AFRICA

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative¹⁴ procedures in South Africa in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of South Africa and cite the legal authorities providing for those differences.
4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of South Africa to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. Please explain any provisions in the enforcement system in South Africa that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or

¹⁴These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under South Africa's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of South Africa on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of South Africa for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of South Africa for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of South Africa and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of South Africa, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of South Africa to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement,

please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions

in the law of South Africa authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in South Africa authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in South Africa.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in South Africa for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in South Africa can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

51. Article 58 specifies procedures to be followed where the competent authorities can act ex officio. Please explain whether the competent authorities in South Africa are empowered to act ex officio and, if so, please identify the intellectual property areas subject to ex officio action.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in South Africa permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments.

Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of South Africa.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of South Africa that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of South Africa that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of South Africa that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of South Africa comply with that obligation.

SWITZERLAND

General Obligations

1. Articles 41.1 and 42 of the TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative¹⁵ procedures in Switzerland in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.
2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.
3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of Switzerland and cite the legal authorities providing for those differences.
4. Articles 41.1 and 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of Switzerland to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.
5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.
6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.
7. Please explain any provisions in the enforcement system in Switzerland that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.
8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determine the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.
9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or

¹⁵These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Civil and Administrative Procedures and Remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceedings that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under Switzerland's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of Switzerland on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceedings. Please describe the means provided under the law of Switzerland for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of Switzerland for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorized to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorizing such actions.

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorized by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of Switzerland and cite the legal authorities providing for those limitations.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorizing such compensation orders.

21. Article 45.2 requires that judges and administrative officials be authorized to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holders' expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorizing such payments.

22. Article 46 requires that judges and administrative officials be authorized to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of Switzerland, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provided, and cite the legal authorities providing for such remedies.

23. Article 47 provides that WTO Members may authorize judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of Switzerland to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

Provisional Measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement,

please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

27. Articles 50.2 and 50.8 require Members to authorize judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorized to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorized to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed".

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorized to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

34. Article 50.5 requires that competent authorities be authorized to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions

in the law of Switzerland authorizing the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of infringement. Please describe how the competent authorities determine "appropriate compensation".

Special Requirements Related to Border Measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in Switzerland authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is prima facie infringement of their trademark or copyright. Please explain what evidence will constitute prima facie infringement in Switzerland.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in Switzerland for a description to be "sufficiently detailed".

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 and cite to the relevant provisions of law or regulations.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority to issue a notice that the release of goods has been suspended.

46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceedings on the merits that will allow customs authorities to hold the goods beyond ten working days.

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorized to conduct such a review and describe the procedure and cite the applicable law or regulations.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

49. Article 57 requires that the competent authorities be able to authorize the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

50. Article 57 also requires that, where the decision on the merits favors the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in Switzerland can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

51. Article 58 specifies procedures to be followed where the competent authorities can act *ex officio*. Please explain whether the competent authorities in Switzerland are empowered to act *ex officio* and, if so, please identify the intellectual property areas subject to *ex officio* action.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in Switzerland permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

53. Please identify:

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments.

Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of Switzerland.

Criminal Procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of Switzerland that fulfill that obligation and provide legal citations.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offense. Please explain the provisions in the law of Switzerland that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions in the law of Switzerland that provide for such procedures and remedies and provide legal citations.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of Switzerland comply with that obligation.