

WORLD TRADE ORGANIZATION

RESTRICTED

IP/Q/B LZ/1

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

Original: English

REVIEW OF LEGISLATION

BELIZE¹

The present document reproduces the introductory statement made by the delegation of Belize, the questions put to it and the responses given in connection with the review of legislation undertaken at the Council's meeting of 26-29 June 2000.²

I. INTRODUCTORY STATEMENT

Belize received questions from four delegations; the United States; Canada; Japan and the European Communities. Belize has presented responses to these questions.

When Belize signed to the WTO Agreement, the legislation on the statute books was very old dating back to the colonial era. It was therefore felt necessary to begin afresh and draft new pieces of legislation. Accordingly, six pieces of legislation were prepared and were passed early this year by the Belizean Parliament. The main dedicated intellectual property rights legislation, which was submitted to the WTO, is as follows: the Copyright Act 2000, the Patents Act 2000, the Industrial Designs Act 2000, the Trade Marks Act 2000, the Protection of Layout-Designs (Topographies) of Integrated-Circuits Act 2000 and the Protection of New Plant Varieties Act 2000. We initially submitted these copies of our laws to the WTO Secretariat, together with responses to the Checklist of Issues on Enforcement, in draft form and I am happy to say that they were later passed by our Parliament without any amendments.

A. COPYRIGHT AND RELATED RIGHTS

Although it is entitled the Copyright Act, the Act actually addresses issues of copyright and the issues related to neighbouring or related rights. The Law is mostly self-contained in that it provides administrative procedures necessary to enforcement copyrights. It provides the civil remedies. It provides certain conservatory oral provisional measures which a copyright holder may take upon infringement. It also has detailed provisions relating to the imposition of sanctions and issues of cross-border agreements. I might add here that Belize is a member of the Berne Convention on the Protection of Literary and Artistic Works. Currently, Belize is examining the feasibility of becoming a member of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, both of 1996. The Governmental Agency of Belize responsible for matters related to

¹ As regards laws and regulations notified by Belize under Article 63.2 of the Agreement, reference is made to documents IP/N/1/B LZ/1, IP/N/1/B LZ/C/1, IP/N/1/B LZ/D/1, IP/N/1/B LZ/L/1, IP/N/1/B LZ/P/1 and 2, IP/N/1/B LZ/T/1 and IP/N/6/B LZ/1.

² The minutes of this meeting have been circulated as document IP/C/M/27.

intellectual property rights is the Ministry of the Attorney General and this ministry is responsible among other things for the preparation of IP-related legislation, the formulation of policy measures related to the IP area and the coordination of activities between other governmental agencies interested in IP issues and non-governmental organizations.

B. TRADEMARKS

The Trade Marks Act of Belize ensures Belize's compliance with the TRIPS Agreement. The Act's provisions give effect to the provisions of the International Convention for the Protection of Industrial Property (the Paris Convention), as last revised. It also has a schedule-making provision for the protection of geographical indications.

C. PATENTS

The Patents Act of Belize contains provisions which ensure and complies with the TRIPS requirements. Basically, the Act which was passed this year provides what is patentable subject-matter, the term of protection, the revocation of the patent, the circumstances under which the rights of the patent may be revoked, the remedies available upon infringement and certain exceptions which may be taken in the national interest. The Intellectual Property Office is responsible for the administration of this Act. Basically, the Intellectual Property Office is based in the Ministry of the Attorney General and it is responsible not only for administering the Patents Act but also the Trade Marks Act, the Protection of Layout-Designs Act and the Protection of New Plant Varieties Act.

D. PLANT VARIETIES

Belize opted to use a *sui generis* system for the protection of new plant varieties and as a result, the Protection of New Plant Varieties Act was enacted basically following some of the suggestions which were contained in the model legislation prepared by UPOV, with certain modifications, however, to meet the unique circumstances of Belize, in order to adequately address the concerns of our people in this critical area.

E. CONCLUDING REMARK

I might add by way of conclusion, that each of the laws notified by Belize contains a general clause or general provision which provides that in cases of inconsistency between the provisions of each individual Act and the provision of a treaty to which Belize is a party, the provision of the treaty will prevail over the provision of the national legislation. This, it is hoped, will enhance the position of Belize in the international trading system.

II. RESPONSES TO QUESTIONS POSED BY CANADA

1. Please describe the way that the enforcement of intellectual property rights has been implemented (Articles 41-61).

See Belize's responses to the Checklist of Issues on Enforcement (document IP/N/6/BLZ/1).

2. What protection does your copyright legislation afford to foreign works?

Section 143 provides as follows:

"143. (1) Subject to the provisions of sub-section (3), the Minister may by Order published in the Gazette provide that, in relation to any provisions specified in the Order, any of the provisions of this Act so specified shall apply:

- (a) in relation to persons who, at a material time, are citizens of Belize;
- (b) in relation to persons who, at a material time, are domiciled or resident in that country, as they apply in relation to persons who, at such a time, are domiciled or resident in Belize;
- (c) in relation to literary, dramatic, musical or artistic works, sound recordings, films or editions first published in that country, as they apply in relation to literary, dramatic, musical or artistic works, sound recordings, films or editions first published in Belize;
- (d) in relation to broadcasts made or cable programmes sent from places in that country by persons permitted or authorized by or under the laws of that country to make those broadcasts or send those cable programmes, as they apply in relation to broadcasts made or cable programmes sent from places in Belize by persons permitted or authorized by or under the laws of Belize to make those broadcasts or send those cable programmes.

(2) An Order made under this section applying any provisions of this Act in relation to any country other than Belize may apply those provisions:

- (a) without exception or modification or subject to such exceptions and modifications as may be specified in the Order;
- (b) generally or in relation to such classes of works or specified.

(3) An Order shall not be made under this section applying any provisions of this Act in relation to any country which is not a party to a Convention relating to copyright or to the rights of performers or of the producers of phonograms to which Belize is also a party, unless the Minister is satisfied that in respect of the class of works which those provisions relate, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright or rights in performances conferred by this Act."

III. RESPONSES TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

A. GENERAL PROVISIONS.

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

- (i) See section 35 of the Patents Act, section 12 of the Patents Act. For compliance with provisions of the TRIPS Agreement, compare the provisions of section 35 of the Patents Act with the provisions of Article 31 of the TRIPS Agreement, and section 12 of the Patents Act with Article 27.3 of the TRIPS Agreement.
- (ii) See section 17 of the Protection of Layout Designs (Topographies) Act.
- (iii) See section 35(4), 35(3)(a) of the Trade Marks Act.
- (iv) See sections 56-85, 124-134 of the Copyright Act.

B. COPYRIGHT AND RELATED RIGHTS

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

See the definition of the expression "author", "artistic work", "literary work" in section 3(1) of the Copyright Act. Protection is given under section 7(1) of the Copyright Act.

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

See the definitions of the expressions "computer programs", "computer-generated work" and "literary work" in section 3(1) of the Copyright Act. Protection is given under section 7(1)(a) of the Copyright Act.

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

Please see the definition of the word "rental" in the section 3(1) of the Copyright Act. The exclusive rights flowing to the author is provided in section 9(1)(b) as read with 9(2)(b) of the Copyright Act.

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

See the definitions of "performer", "a broadcast" and "to broadcast" in section 3(1) of the Copyright Act. See also paragraph (g) of the definition of "author" in section 3(1) of the Copyright Act. See further sections 7(1)(b), 8(5), 12, 108, 109, 110, 111, (performers' rights), 112, 113, and 114 (producers' rights).

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

See Part VI (Exceptions to infringement of copyright), sections 55-85. See further Part VIII (Exceptions to infringement of Rights in Performances), sections 124-134.

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

See sections 10, 11, 12, 13 and 115.

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

None.

C. TRADEMARKS

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

See the definitions of "trade mark", "certification mark", and "collective mark" under section 2(1) of the Trade Marks Act. See also section 2(2) of the Trade Marks Act. To be registered a trademark must be distinctive and non-deceptive, among other things (see sections 35, 36 and 37).

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

Yes, services are protectable. See the definitions of "trade mark", "certification mark" and "collective mark" in section 2(1) of the Trade Marks Act as read with section 2(2) of the Trade Marks Act. The definition of "trademark" is non-exhaustive. As long as a sign is capable of being represented graphically to distinguish goods or services of one undertaking from goods or services of a competitor, it will be protected regardless of whether it is a sound mark, container or a perfume name. Note, however, the provisions of section 35.

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

The requirements as to use must be in respect of a "trade" as defined in section 2(1) of the Trade Marks Act. Non-use for a period of five years may lead to revocation of the mark. (section 46(1)(a) and (b)). The definition of "use" of a trademark is provided in section 46(2). Note, however, the provisions of section 46(3). See also section 48 on the legal effect of acquiescing to the use of a trademark in Belize.

In respect of "use" as a precondition to registration, see section 35(4).

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

For duration of trademark registration (i.e. a period of ten years), see section 20(1). Renewal periods are for further ten-year periods in accordance with section 21. Such ten-year renewal periods will be for an indefinite period.

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

Legislation prescriptions limiting the use of a trademark in Belize are specified in section 26 of the Trade Marks Act. Additionally, provision is made in section 27 for the "exhaustion" of the rights of a proprietor in certain specified circumstances. Further, use of a trademark in Belize may be limited by a disclaimer as provided in section 28.

D. GEOGRAPHICAL INDICATIONS

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

No. See definitions of "trademark", "collective mark" and "certification mark" in section 2(1) as read with section 2(2). See further section 35(1)(c) as read with the proviso to section 35(1) of the Trade Marks Act.

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

See definition of "certification mark" and "collective mark" in section 2(1) of the Trade Marks Act. See further paragraph 3 of the First and Second Schedules.

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

Pursuant to paragraph 3(1) of both the First and Second Schedules, the indication must serve, in trade, to designate the geographical origin of the goods and services.

17. Please describe whether or not additional protection is granted by your legislation to wines and spirits and if such protection is granted, please describe. Please mention other types of products, if any, covered by this additional protection.

Additional protection for wines and spirits as provided for under the TRIPS Agreement will be provided in Regulations to be filed with the Registrar pursuant to paragraph 5 of the First Schedule and paragraph 6 of the Second Schedule. Other types of products to be afforded additional protection will likewise be specified in the same Regulations.

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

Pursuant to Article 24.6 of the TRIPS Agreement, Belize will not register or recognize a trademark which has lost its capability to distinguish goods or services of one undertaking from similar goods or services of other undertakings, especially where the public had adopted and used such mark, not as a trademark, but as the general name of the class of goods or services, e.g. ASPIRIN. Also, trademarks which become generic before application for their registration in Belize is made will not be eligible for registration because they will not be capable of fulfilling the "distinguishing" criteria.

At present, there is not list of examples of names considered "generic" in Belize, because the Trade Marks Act of Belize was enacted in June 2000 and has not yet been the subject of litigation before the courts.

E. INDUSTRIAL DESIGNS

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

Protection of industrial designs dictated essentially by functional considerations: see the definition of "industrial design" in section 2 of the Industrial Designs Act. For the protection of textile designs, see section 10(1), (2) and (3), but note the provisions of section 10(4).

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

See section 10(2), which prohibits the importation of any article into Belize embodying the industrial design without the authority of the right holder. Where importation takes place, the right holder is empowered under section 24(2)(d) to apply to the Supreme Court for an Order specified thereunder in order to arrest the importation. Additionally, section 24(2)(c) enables the design holder to apply for an injunction to prevent further infringement.

21. Please mention whether or not your legislation provides for the right to issue a compulsory licensing for industrial designs.

The area of industrial designs in Belize is governed by the Industrial Designs Act (No. 13 of 2000). Section 16 of this Act provides for "licence contracts", which are voluntary..

22. Please indicate for which period of time your legislation grants protection for industrial designs.

Duration of an industrial design under the Act is five years from the filing date of the application for registration but may be renewed for two further consecutive periods of five years. See section 11(1).

F. PATENTS

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

Description of novelty – see section 9 of the Patents Act. Description of inventiveness – see section 10 of the Patents Act. Description of industrial application – see section 11.

In short, by "novelty" is meant that the invention must never have been made before, carried out before or used before. By "inventiveness" is meant that the invention must be enough of an advancement to be considered "non-obvious" by a person having ordinary skill in the art of the invention. By "industrial application" is meant that the invention must be able to be used on a certain scale in practice.

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

Patent rights are not enjoyable without exclusions. Exclusions are provided in section 12 ("Matters excluded from patent protection") which include:

- (a) discoveries, scientific theories and mathematical methods;
- (b) schemes, rules or methods of doing business;
- (c) methods for the treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practised on the human or animal body.

Also, under section 12(3) inventions may be excluded from patentability on the grounds of public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment. See also section 35.

25. Please explain whether your legislation provides for the exclusion of inventions from patentability based on *ordre public* or morality. If so, please explain the relevant section of your legislation and explain its formulation. Please, also explain if it has been applied in practice.

Exclusion on the grounds of *ordre public* or morality – see section 12(3) of the Patents Act. For the formulation, see that even though the grant of a patent is prohibited by law in Belize, that *per se* shall not constitute the ground of refusal, but should be considered within the wider context of issues of public order, morality, protection of the environment, human, plant and animal life, etc. This provision has not yet been applied in practice.

26. Please explain whether or not diagnostic, therapeutic and surgical methods are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.

See section 12(1)(c) of the Patents Act as read with 12(2). See also 9(4) of the Patents Act.

27. Please explain whether or not plants, animals and essentially, biological processes are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.

See section 12(1)(c) of the Patents Act as read with 12(2).

28. Please describe how micro-organisms, non-essentially biological processes, microbiological processes and plant varieties are protected in your legislation. Please explain in this respect the relevant sections of your legislation.

These processes are protected under a complete Act "the Protection of New Plant Varieties Act". This Act also has an impact on Question 26 and 27 above.

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

See section 33(1) and 33(2)(a)(i) ("importation") ("sale"). For enforcement provisions, refer to the patent portion of Belize's answers to the Checklist of Issues on Enforcement (document IP/N/6/BLZ/1).

30. Please inform if your legislation provides for patent product protection of pharmaceutical and agricultural chemical products. If your response is in the affirmative, please indicate the legal reference.

See section 9(4), which addresses the issue of pharmaceutical products.

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

See section 33(2)(a) and especially 33(2)(b)(i) and (ii) of the Patents Act.

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

See sections 17, 21 ("right of priority") and 23 of the Patents Act. In respect of genetic plant materials, see the Protection of New Plant Varieties Act.

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

For the exceptions to the exclusive rights in a patent, see section 35 and section 38.

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

Yes, the Patents Act of Belize provides for compulsory licensing, - see section 38.

35. Please explain how your legislation explicitly ensures that a proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. In this context, how do you define "reasonable period of time". Please also explain how your legislation ensures that the use of a compulsory licence shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use.

See section 35(1)(b), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12). Reasonableness, in countries following the common law tradition, is a concept determined objectively by a court or the Minister on a case-by-case basis, hence the higher protection to semi-conductor technology in 35(6).

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

For the 20 year duration period of a patent, see section 28(1). No additional protection is offered beyond the 20 year protection period.

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

This enhanced patent protection is provided for under section 72.

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

For the reversal of the burden of proof in relation to process applications, see section 41(7)(a).

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS.

39. Please describe how your legislation protects topographies.

Layout designs are protected in Belize by the Protection of Layout-Designs (Topographies) of Integrated Circuits Act (No. 15 of 2000). A copy of this Act was deposited with the WTO Secretariat in document IP/N/1/BLZ/L/1.

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

See section 6(2) as read with section 24.

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

See section 6(3)(d) of the Act.

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

See section 7. Protection is for ten years.

H. PROTECTION OF UNDISCLOSED INFORMATION

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

No.

44. Please explain how your legislation defines "undisclosed information".

None.

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

None.

I. ENFORCEMENT

46. See the Checklist of Issues on Enforcement (document IP/C/5).

See Belize's answers to the Checklist of Issues on Enforcement (document IP/N/6/BLZ/1).

IV. RESPONSES TO QUESTIONS POSED BY JAPAN

A. COPYRIGHT AND RELATED RIGHTS

1. Please explain how the protection is provided for works, phonograms, performances and broadcasts from other WTO Members under the Law on Copyright and Neighbouring Rights of Belize (hereinafter referred to as "Copyright and Neighbouring Rights Law"). Please describe the provisions of the Copyright and Neighbouring Rights Law which provide for the national treatment and most-favoured-nation treatment as required by Articles 3 and 4 of the TRIPS Agreement as well as Article 9.1 of the Agreement which incorporates Article 5(1) of the Berne Convention.

Section 143 provides as follows:

"143.(1) Subject to the provisions of sub-section (3), the Minister may by Order published in the Gazette provide that, in relation to any country specified in the Order, any of the provisions of this Act so specified shall apply:

- (a) in relation to persons who, at a material time, are citizens or subjects of that country, as they apply in relation to persons who, at such a time, are citizens of Belize;
 - (b) in relation to persons who, at a material time, are domiciled or resident in that country, as they apply in relation to persons who, at such a time, are domiciled or resident in Belize;
 - (c) in relation to literary, dramatic, musical or artistic works, sound recordings, films or editions first published in that country, as they apply in relation to literary, dramatic, musical or artistic works, sound recordings, films or editions first published in Belize;
 - (d) in relation to bodies incorporated by or under the laws of that country, as they apply in relation to bodies incorporated by or under the laws of Belize;
 - (e) in relation to broadcasts made or cable programmes sent from, places in that country by persons permitted or authorized or under the laws of that country to make those broadcasts or send those cable programmes, as they apply in relation to broadcasts made or cable programmes sent from places in Belize by persons permitted or authorized by or those broadcasts or send those cable programmes.
- (2) An Order made under this section applying any provisions of this Act in relation to any country other than Belize may apply those provisions:
- (a) without exception or modification or subject to such exceptions and modifications as may be specified in the Order;
 - (b) generally or in relation to such classes of works or such other classes or cases, as may be so specified.

(3) An Order shall not be made under this section applying any provisions of this Act in relation to any country which is not a party to a Convention relating to copyright or to the rights of performers or of the producers of phonograms to which Belize is also a party, unless the Minister is satisfied that in respect of the class of works which those provisions relate, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright or rights in performances conferred by this Act."

2. Please explain exceptions or exemptions of the national treatment and most-favoured-nation treatment under the Copyright and Neighbouring Rights Law, if any, as permitted in Articles 3 and 4 of the TRIPS Agreement.

None.

3. Please explain whether and how Belize provides retroactive protection to works, phonograms, performances from other WTO Members, as required by Articles 9.1, 14.6 and 70.2 of the TRIPS Agreement which apply, *mutatis mutandis*, Article 18 of the Berne Convention. Please indicate the date to which such protection extends back with respect to each category of subject-matter.

Belize does not provide retroactive protection to works, phonograms, performances from other WTO Members. See section 148, which provides that "No copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Act or some other enactment in that behalf", thus giving the right to copyright protection in Belize a prospective character.

4. Please explain whether protection of "computer programs" under the Copyright and Neighbouring Rights Law covers computer programs in both source and object code, as required by Article 10.1 of the TRIPS Agreement. Are those computer programs protected as literary works in accordance with Article 2(1) of the Berne Convention?

Yes, protection of copyright in computer programs extends to both the source and as object code as required under Article 10.7 of the TRIPS Agreement. Section 3(1) of the Copyright Act defines a "computer program" as a set of instructions, whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine readable medium, of causing an electronic or other device having information processing capabilities to indicate, perform or achieve a particular function, task or result". Those works are protected as literary works pursuant to Article 2.1 of the Berne Convention, since section 3(1) of the Copyright Act defines a literary work as "any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes:

- (a) a written table or compilation;
- (b) a computer program."

Section 7(1)(a) declares that copyright subsists under the Act to original literary works.

5. Please clarify whether "database" under the Copyright and Neighbouring Rights Law includes compilation of data in machine-readable form. Please explain how the Law complies with Article 10.2 of the TRIPS Agreement in this respect.

See the answer to section 4 above. The definition. of "computer programs" by its very nature, includes "databases" or compilations of data or other instructions or tables, whether expressed in

words or in a schematic or other form. The protection afforded extends to the data or other material itself as well as to the rights in the data. (See section 7(1)).

B. ENFORCEMENT

6. Please indicate the remedies which the judicial authorities order regarding intellectual property rights, including injunctions, damages, expenses, destruction or disposal of infringing goods, materials or implements for their production. Please explain the criteria for and the way of calculation to decide the amount of the damages which judicial authorities order to the person who infringes intellectual property rights to pay to the right holder.

The enforcement provisions found in the Copyright Act and other IPR laws may be divided into the following categories: (i) conservatory or provisional measures; (ii) civil remedies; (iii) criminal sanctions; (iv) cross-border measures; and (v) remedies and sanctions against abuses in respect of technical devices (decoding instruments in respect of encrypted television broadcasts).

Conservatory or provisional measures:

These have two purposes: First, to prevent an infringement from occurring, particularly to prevent the entry of the infringing goods into the channels of commerce, including entry of imported goods after clearance by customs, and second, to preserve relevant evidence in regard to an alleged infringement. The most effective conservatory measure under the Belize Copyright Act calls for a search of an alleged infringer's premises without notice, and seizure of suspected infringing goods, the equipment used to manufacture them, and all relevant documents and other records of the alleged infringing business activities. See sections 37, 38 to 40, 46-54, 118-123, and 135-139 of the Copyright Act.

Civil remedies:

The purpose of civil remedies under the Belize Copyright Act is to compensate the owner of rights for economic rights suffered because of infringement, in the form of monetary damages, thereby creating an effective deterrent to further infringement. Civil remedies usually also take the form of a judicial order to destroy the infringing goods and the instruments used to produce them where there is a danger that the infringing acts may continue. Also, courts are allowed to issue injunctions, failure to comply with which would result in the commission of a criminal offence. See sections 32-46, 118-120 of the Copyright Act.

7. Please explain the kind and amounts of criminal penalties including imprisonment and fines regarding intellectual property rights. In particular, are the crimes persecuted only when the injured party has made a formal accusation? Please also explain whether penalties are consistent with Article 61 of the TRIPS Agreement which requires the penalties to be sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

Criminal sanctions:

(a) Copyright Act.

The following sections in the Belize Copyright Act specify the offences and penalties in respect of dealings which infringe copyright:

Section 52 provides as follows:

"52(1) Any person who, without the licence of the copyright owner, at a time when copyright in a work subsists by virtue of this Act:

- (a) makes for sale or hire; or
- (b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes; or
- (c) imports into Belize for purposes other than his private and domestic use; or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright; or
- (e) possesses in the course of business with a view to committing any act infringing the copyright,

any article which he knows or has reason to believe is an infringing copy of that work, commits an offence.

(2) Any person who, at the time when copyright subsists in a work by virtue of this Act makes or has in his possession an article specifically designed or adapted for making copies of a particular protected work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence.

(3) Any person who causes:

- (a) a literary, dramatic or musical work to be performed in public; or
- (b) a sound recording or film to be played, or as the case may be, shown in public;

(otherwise than by reception of a broadcast or cable programme) knowing or having reason to believe that copyright subsists in the work or that the performance constitutes an infringement of the copyright, commits an offence.

(4) Any person who is guilty of an offence under sub-section (1) shall be liable on summary conviction, in the case of a first conviction, to a fine not exceeding one thousand dollars for each article to which the offence related, and in the case of any subsequent conviction, to a fine not exceeding one thousand five hundred: dollars for each such article, or to imprisonment for a term not exceeding twelve months.

(5) Any person who is guilty of an offence under sub-section (2) or sub-section (3) shall be liable on summary conviction in the case of a first conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five thousand dollars or to imprisonment for a term not exceeding two years."

Section 121 provides as follows:

"121.(1) A person commits an offence who without sufficient criminal ability for making, etc. recordings:

- (a) makes for sale or hire; or

- (b) imports into Belize otherwise than for his private or domestic use; or
- (c) possesses in the course of a business with a view to committing any act infringing the right's conferred by this Part; or
- (d) in the course of a business:
 - (i) sells or lets for hire; or
 - (ii) offers or exposes for sale or hire; or
 - (iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording.

(2) A person commits an offence who causes a recording of a performance made without sufficient consent to be:

- (a) shown or played in public; or
- (b) broadcast or included in a television programme service,

thereby infringing any of the rights conferred by this part, if he knows or has reason to believe that those rights are thereby infringed.

(3) In sub-sections (1) and (2) "sufficient consent" means:

- (a) in the case of a qualifying performance, the consent of the performer; and
- (b) in the case of a non-qualifying performance subject to an exclusive recording contract:
 - (i) for the purpose of paragraph (a) of sub-section (1), the consent of the performer or the person having recording rights; and
 - (ii) for the purposes of paragraphs (b), (c), and (d) of sub-section (2), the consent of the person having recording rights;

(c) whether a work was published or otherwise dealt with in the lifetime of a person,

any unauthorized publication or the doing of any other unauthorized act shall be disregarded.

(7) A publication or other act shall for the purposes of sub-section (6), be taken to have been unauthorized if, but only if:

- (b) Industrial Designs Act, 2000.

Section 24(5) provides that any person who intentionally performs an act which constitutes an infringement of an industrial design commits an offence and is liable to a fine of five thousand dollars or to imprisonment for five years.

- (c) Patents Act, 2000.

Section 64 provides as follows:

"64. Any person who intentionally or wilfully performs any which constitutes an infringement as defined under section 40 commits an offence and is liable to a fine of not less than fifteen thousand dollars but not more than forty thousand dollars, or to imprisonment for a term of not less than five years but not more than twelve years, or to both such fine and such imprisonment.

- (2) Any person who, knowing the same to be false:

- (a) makes or causes to be made a false entry in the Register;
- (b) makes or causes to be made any document falsely purporting to be a copy of an entry in the Register; or
- (c) produces, tenders or causes to be produced or tendered as evidence any such entry or copy thereof, commits an offence and is liable to a fine of not less than ten thousand dollars, but not more than thirty thousand dollars, or to imprisonment for not less than three years, but not more than ten years, or to both such fine and such imprisonment.

- (3) Any person who, knowing the same to be false, makes a false statement or representation that:

- (a) a patent or utility model certificate has been granted to him or to any other person in respect of any invention; or
- (b) he has been granted an exclusive or non-voluntary licence to use any patent or utility model certificate,

which statement or representation induces another person to act thereon, commits an offence and is liable to a fine of not less than five thousand dollars, or to imprisonment for a term not less than two years, but not more than five years, or to both such fine and imprisonment.

- (4) Any person who falsely represents that anything disposed of him for value is a patented product or process shall, subject to sub-sections (5) to (7), commit an offence and be liable to a fine of not less than four thousand dollars, but not more than ten thousand dollars.

- (5) For the purposes of sub-section (4), a person who for value disposes of an article having stamped, engraved or impressed on it or otherwise applied to it the word "patent" or "patented" or anything expressing or implying that the article is a patented product, shall be taken to represent that the article is a patented product.

- (6) Sub-section (4) shall not apply where the representation is made in respect of a product after the patent for that product or, as the case may be, the process in question has expired or been invalidated and before the end of a period which is reasonably sufficient to enable the accused to take steps to ensure that the representation is not made (or does not continue to be made).

- (7) In proceedings for an offence under this section it shall be defence for the accused to prove that he used due diligence to prevent the commission of the offence.

(8) Any person who represents that a patent has been applied for in respect of any article disposed of for value by him, and;

- (a) no such application has been made; or
- (b) any such application has been refused or withdrawn,

commits an offence and is liable to a fine of not less than four thousand dollars, but not more than ten thousand dollars."

- (d) Protection of Layout-Designs (Topographies) Act, 2000.

Section 25 provides as follows:

"25.(1) Any person who performs an act which is unlawful under section 6 commits an offence and is liable to a fine not less than fifteen thousand dollars, but not more than forty thousand dollars, or to imprisonment for a term of not less than five years, but not more than ten years.

- (2) Any such person who, knowing the same to be false:
 - (a) makes or causes or causes to be made a false entry in the Register;
 - (b) makes or causes to be made any document falsely purporting to be a copy of an entry in the Register; or
 - (c) produces, tenders or causes to be produced in evidence any such entry or copy thereof,

commits an offence and is liable to a fine of not less than ten thousand dollars, but not more than thirty thousand dollars, or: to imprisonment for a term of not less than three years, but not more than ten years, or to both such fine and such imprisonment."

- (e) Plant Varieties Act, 2000.

Section 45 provides as follows:

"45.(1) Any person who wilfully offers for sale or markets propagating material of a variety protected in Belize or a denomination likely to cause confusion therewith, or another variety of the same botanical or a related species commits an offence and is liable to a fine of not less than five thousand dollars but not more than fifteen thousand dollars.

(2) Any person who wilfully makes use of the registered variety denomination of a variety protected in Belize or a denomination likely to cause confusion there with, or another variety of the same botanical or a related species commits an offence and is liable to a fine of not less than five thousand dollars but more than fifteen thousand dollars."

- (f) Trade Marks Act, 2000.

Sections 75, 76 and 77 provide as follows:

"75.(1) A person commits an offence who with a view to gain for himself or another, or with intent to cause a loss another, and without the consent of the proprietor:

- (a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trademark; or
 - (b) sells or lets for hire, offers or exposes for sale or hire or distributed goods which bear, or the packaging of which bears, such a sign; or
 - (c) has in his possession, custody or control in the course, of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b) above.
- (2) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor:
- (a) applies a sign identical to, or likely to be mistaken for, a registered trademark; to material intended to be used:
 - (i) for labeling or packaging goods;
 - (ii) as a business paper in relation to goods;
 - (iii) for advertising goods; or
 - (b) uses in the course of a business material bearing such a sign for labeling or packaging goods, as a business paper in relation to goods, or for advertising goods; or
 - (c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything by himself or another, which would be an offence under paragraph (b).
- (3) A person commits an offence who with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor:
- (a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trademark; or
 - (b) has such an article in his possession, custody or control in the course of a business, knowing or having reason to believe that it has been, or is to be, used to produce goods, material for labeling or packaging goods, as a business paper in relation to goods, or for advertising goods.
- (4) A person does not commit an offence under this section unless:
- (a) the goods are goods in respect of which the trademark is registered; or the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trademark.
- (5) It is defence for a person charged with an offence under this section to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trademark.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a period not exceeding and

where the offence continues after the first ten years, convention, to a further fine of one hundred dollars for every day such offence continues, or in default of payment of: the fine to imprisonment for a period of ten days for every day Such offence continues.

76.(1) It is an offence for person to make, or cause to be made, a false entry in the register of trademarks, knowing or etc. having reason to believe that it is false.

(2) It is an offence for a person:

- (a) to make or cause to be made anything falsely purporting to be a copy or an extract of ancestry in the. register; or
- (b) to produce or tender or cause to be produced or tendered in evidence any such thing, knowing or having reason to believe that it is false.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding: ten thousand dollars or to imprisonment for a period not exceeding five years, or to both such fine and period of imprisonment.

77.(1) It is an offence for a person:

- (a) falsely to represent that a mark is a registered trademark; or
- (b) to make a false representation as to the goods or services for which a trademark is registered.

(2) For the purpose of this section, the use in Belize in relation to a trademark:

- (a) of the word "registered"; or
- (b) of any other word or symbol importing a reference (express or implied) to registration, shall be deemed to be a representation as to registration under this Act unless it is shown that the. reference is to registration elsewhere than in Belize and that the trademark is in fact so registered for the goods or services in question.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding eight thousand dollars or to imprisonment for a period not exceeding four years, or to both such fine and period of imprisonment.

78.(1) Where an offence is committed under this Act by a body corporate, every person who at the material time was a partnership.

Director, Manager, Secretary or other similar officer of the body corporate, or any person purporting to an act in such capacity shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or connivance, or that he tried to prevent the commission of the offence.

(2) Sub-section (1) shall *mutatis mutandis*, apply in respect of partners in a partnership for offences committed by a partnership under this Act.

(3) A fine imposed on a partnership on its conviction under this Act shall be paid out of the partnership assets."

8. Please indicate titles of laws and regulations and their provisions in which the suspension of the release of counterfeit trademark or pirated copyright goods is prescribed, as stipulated in Article 51 of the TRIPS Agreement. Please explain types of intellectual property rights about which the suspension can be made upon application by a right holder.

Please see the Copyright Act of Belize (No. 12 of 2000) and the Trade Marks Act of Belize (No. 17 of 2000) which provide for the suspension of counterfeit/pirated goods into the main channels of commerce in Belize. Specifically, please refer to section 74 of the Trade Marks Act and section 51 of the Copyright Act. Additionally, the Belizean legal system is based on the English common law, and as such a proprietor of a trademark has available to him under the Belizean legal system the common law remedy of passing-off, designed to prevent a person from saying that his goods are those of another person (i.e. designed to prevent counterfeiting).

V. RESPONSES TO QUESTIONS POSED BY THE UNITED STATES

A. GENERAL

1. Please describe, in relation to each form of intellectual property covered by the TRIPS Agreement, including plant variety protection, the manner in which national treatment and most-favoured-nation treatment are provided to nationals of other WTO Members.

(a)	Copyright Bill, 2000	Clause 143
(b)	Patents Bill, 2000	Clause 54
(c)	Trade Marks Bill, 2000	Clause 59
(d)	Protection of Layout Designs (Topographies) Bill, 2000	Clause 27
(e)	Industrial Designs Bill, 2000	Clause 26
(f)	Protection of New Plant Varieties Bill, 2000	Clause 13

B. COPYRIGHT AND RELATED RIGHTS

2. Please explain whether and how the Belize copyright law complies with Article 9 of the TRIPS Agreement requiring that Members comply with all Articles 1 through 21 of the Berne Convention (1971), except Article 6bis, since Members do not have rights or obligations relating to the latter Article under the TRIPS Agreement.

The Belize copyright law complies with Article 9 of the TRIPS Agreement, requiring compliance with Articles 1 through 21 of the Berne Convention (1971). This is by virtue of the fact that the Belize copyright law is based on a WIPO draft model legislation which conforms with Articles 1 through 21 of the Berne Convention (1971). In fact the Belize copyright law goes further than Article 9 of the TRIPS Agreement because it also complies with Article 6bis (moral rights) – Part III (Copyright Bill, 2000).

3. Please explain how the Belize copyright law protects computer programs as literary works and compilations of data as required by Article 10 of the TRIPS Agreement.

Clause 7 of the Copyright Bill, 2000 provides protection for original literary works. Clause 3 of the Bill defines a literary work as including computer programs and compilations. Clause 49(4)

also states that in computer programs shall be admissible in evidence and presumed to be correct until the contrary is proved.

4. Article 11 of the TRIPS Agreement protects rental rights for computer programs and cinematographic works. Please cite the corresponding provision of the Belize copyright law.

Clause 9(1)(b) as read with Clause 9(2)(b).

5. Please state the length and terms of protection the Belize copyright law provides for a work other than a photographic work or a work of applied art and cite to the relevant provision of law.

Clause 10.

6. Please explain what protection the Belize copyright law provides for performers, and provide the length and terms of the protection.

Part VIII of the Copyright Bill, 2000.

7. Article 14.2 of the TRIPS Agreement provides that producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Article 14.2 requires that producers of phonograms have the right to authorize or prohibit the commercial rental to the public of originals or copies of their phonograms. Please clarify whether and how the Belize copyright law implements these obligations.

Part II of the Copyright Bill, 2000. Specifically, the provisions dealing with sound recordings.

Part VIII - with regard to rental, the relevant provision is Clause 9(1)(b) as read with Clause 9(2)(b).

C. TRADEMARKS

8. Please describe the subject-matter that can comprise a trademark under the Belize trademark law.

Clause 2(1) defines a trademark as any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings and it may, in particular, consist of letters, numerals or the shape of goods or their packaging.

Clause 2(2) states further that references to marks include references to a collective mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, materials, mode of manufacture of goods or performance of services, and the provisions of this Act apply to certification marks subject to the provisions of the Second Schedule.

9. Please describe the procedure that must be followed to register a trademark in Belize, citing the provisions of the law under which such registration is provided, and describe the rights that the owner of a registered mark.

The registration procedure is covered by Part III of the Trade Marks Bill, 2000. Part III also states the rights conferred by a registered trademark (Clause 24).

10. Please explain whether the Belize trademark law provides for a means to publish a trademark either before it is registered or promptly after it is registered, and whether the trademark protection procedure otherwise complies with Article 15.5 of the TRIPS Agreement.

The Belize trademark law provides for the publication of an accepted application for registration in the register and the Journal (Clause 16(1) Part III).

Clause 21(6) also provides for the publication of the renewal or restoration of the registration of a trademark.

11. Please explain whether the Belize trademark law presumes a likelihood of confusion where an identical mark for identical goods and services is used without authorization on identical goods or services as required.

Such situations are covered by Clause 25 (which deals with infringement of registered trademark).

12. Please explain whether and how the Belize trademark law provides for the protection of well-known trademarks and service marks, citing to the relevant provisions of law.

As can be noticed in the answer to question 8, protection is given to trademarks covering both goods and services.

13. Please provide the length and terms of protection the Belize trademark law provides for a trademark.

Clauses 20 and 21 of the Trade Marks Bill, 2000 provides for the duration of registration, the renewal of registration and the terms for maintaining protection.

14. Please explain how the Belize trademark law comports with the use provision of Article 19 of the TRIPS Agreement.

See Clause 12(3).

D. GEOGRAPHICAL INDICATIONS

15. What provisions of Belize's law or regulations provide for the recognition of geographical indications required by Articles 22.2 and 23.1 of the TRIPS Agreement? Please provide citations to those laws.

See the first Schedule (sections 2(1) and 57) and the Second Schedule (sections 2(1) and 58) of the Trade Marks Bill, 2000.

16. In determining whether recognition should be given a geographical indication, what criteria are considered?

See Clauses 12 and 15, and the First and Second Schedules.

17. Please describe the manner in which the higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement is provided and provide examples of such products and the law under which they are protected

The higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement can be obtained under the Second Schedule to the Trade Marks Bill, 2000, which deals with certification marks. However, such products are not specifically referred to in the Bill.

18. Please describe the legal means available under the law of Belize that enable interested parties to ensure the protection required by Articles 22 and 23, and cite to the relevant provisions of law?

Interested parties can ensure the protection required by Articles 22 and 23 in Belize under the Trade Marks Bill, 2000. Specifically, Part III and the First and Second Schedules.

E. INDUSTRIAL DESIGNS

19. Please describe the procedure that must be followed to obtain protection for industrial designs, citing to the provisions of the Belize law, and describe the nature of the protection provided.

See Clause 5 of the Industrial Designs Bill, 2000, with regard to the procedure to be followed to obtain protection. The nature of the protection is covered by Clause 10.

20. Please describe the procedure that must be followed to obtain protection for textile designs and cite to the provisions of the law under which such protection is provided.

See the definition of "industrial design", in Clause 2, which includes materials. For the procedure to obtain protection, see Clause 5 of the Bill.

F. PATENTS

21. Please explain whether and how the Belize patent law implements Article 27 of the TRIPS Agreement.

See Part III of the Patents Bill, 2000.

22. What provisions of the Belize patent law or regulations provide to patent holders the rights required by Article 28 of the TRIPS Agreement? Please provide citations to those laws or regulations.

See Clause 33 of the Patents Bill, 2000. With regard to Article 28.2 (assignment, transfer by succession and licensing contracts), see Clauses 31 and 37 of the Bill.

23. Please describe the nature of the disclosure required of patent applicants under the Belize patent law.

See Clause 17 of the Patents Bill, 2000.

24. Please state whether, under the Belize patent law or regulations, compulsory licences can be issued, cite the relevant sections of law, and describe in detail the conditions under which they can be issued.

Compulsory licences are issued under Clauses 38 and 39 of the Bill.

25. Please indicate whether the Belize patent law or regulations provide an opportunity for judicial review of decisions to revoke or forfeit a patent as required by Article 32 of the TRIPS Agreement.

The Belize patent law provides an opportunity for judicial review of decisions to revoke or forfeit a patent as required by Article 32 of the TRIPS Agreement (See Clause 62).

26. What term of protection does the Belize patent law provide for patents? Does the law contain any provisions for extension of the term, and, if so, provide information on such extensions and the conditions that give rise to them.

The term of protection for patents in Belize is 20 years. See Clause 28 of the Bill, which deals with the duration and maintenance of patents.

27. Under what provisions of the Belize patent law can the burden of proof in a process patent infringement action be placed on the defending party as required by Article 34 of the TRIPS Agreement? Please cite to those provisions.

See Clause 41(7).

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

28. What provisions of the Belize patent law provide for the protection for layout-designs of integrated circuits (referred to in the TRIPS Agreement as "layout-designs") that are registered or have been commercially exploited anywhere in the world, as outlined in Article 35 of the TRIPS Agreement. Please provide citations to those laws.

Belize has specific legislation on this subject matter entitled the "Protection of Layout-Designs (Topographies) Bill, 2000". The Bill provides extensive protection for layout-designs including for layout-design right holders. See Clauses 3, 5, 6, 8, 11, and also 27.

29. Please describe in detail the scope of protection provided layout-designs under those laws.

See Clause 6.

30. For what term is protection provided for layout-designs?

The term of protection is ten years. See Clause 7.

H. PROTECTION OF UNDISCLOSED INFORMATION

31. Please describe in detail how the Belize law provides for the protection of undisclosed information that is secret as defined in Article 39.2 of the TRIPS Agreement and provide citations to the relevant provisions of law.

Belize law does not specifically provide for the protection of undisclosed information. Intellectual property protection for pharmaceuticals and agricultural chemical products can be obtained under the Patents Bill, 2000.

32. Please describe in detail the manner of protection provided to test data regarding pharmaceutical and agricultural chemical products which are undergoing testing in order to obtain marketing approval in Belize and cite to the relevant provisions of law.

In Belize, there is no distinct piece of legislation which deals strictly with issues of undisclosed information. The Belize legal system is essentially founded on a modification of the English common law, and the common law remedies of unfair competition would protect such undisclosed information.

The Patents Act of Belize, 2000, also recognises that patents may be granted in respect of processes used to make substances or compositions of treatment to the human body (i.e. pharmaceutical products)(see section 9(4)), and any technical data disclosed in the abstract during patent application is accorded the normal protection afforded to all other information included in the patent application, and protection of that information is for the life of the patent if granted, i.e. twenty years.

The right to information, specifically the right to communicate ideas and information without interference (into which category the test data referred to in questions 32 and 33 fall) is a fundamental right under section 12(1) of the Belize Constitution.

Lastly, references to date relating to pharmaceuticals and agricultural chemical products will specifically be covered in subsidiary legislation to be developed under Belize's intellectual property law submitted to the WTO Secretariat prior to Belize's review in June of this year.

33. Are other applicants for marketing approval for their own versions of a previously approved pharmaceutical or agricultural chemical products permitted to rely on data submitted by the earlier applicant? If so, how long a period of exclusivity is the earlier applicant given before such reliance becomes possible.

Please see the response to question 32.

I. ENFORCEMENT – GENERAL OBLIGATIONS

34. Please explain whether the laws of Belize provide for effective action against infringement of intellectual property rights as required by Article 41.1 of the TRIPS Agreement.

The laws of Belize do provide for effective action against infringement of intellectual property rights as required by Article 41.1 of the TRIPS Agreement. See the following provisions:

(a)	Copyright Bill, 2000	Part V
(b)	Trade Marks Bill, 2000	(i) Clause 25 (ii) Clauses 49-55 (iii) Clauses 75-81
(c)	Patents Bill, 2000	(i) Part X (ii) Clause 63
(d)	Industrial Designs Bill, 2000	Clause 24
(e)	Protection of New Plant Varieties Bill, 2000	Part XIII
(f)	Protection of Layout Designs (Topographies) Bill, 2000	(i) Clause 24 (ii) Clause 25

J. ENFORCEMENT – CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

35. Article 42.4 of the TRIPS Agreement provides for appeals to judicial bodies of final administrative decisions and of at least the legal aspects of initial judicial decisions on the merits of any act of infringement of intellectual property rights. Please explain whether the laws of Belize provide for such a mechanism.

The Laws of Belize do provide for appeals to judicial bodies of final administrative decision and the legal aspects of initial judicial decisions:

- (a) Section 95 of the Belize Constitution (CAP. 4) states that the "Supreme Court shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law."
- (b) Section 10 of the Constitution states that the "Court of Appeal shall have such jurisdiction and powers to hear and determine appeals in civil and criminal matters as may be conferred on it by this Constitution or any other law."
- (c) Part VII of the Copyright Bill, 2000, gives the Supreme Court extensive jurisdiction in licensing matters.
- (d) Trade Marks Bill, 2000 - Clauses 46(4) and 47(3) and (4).
- (e) Patents Bill, 2000 - Clauses 47 and 48.
- (f) Industrial Designs Bill, 2000 - Clauses 14 and 23.
- (g) Protection of New Plant Varieties Bill, 2000 - Clauses 26 and 43.
- (h) Protection of Layout-Designs (Topographies) Bill, 2000 - Clauses 18 and 23.

36. Please elaborate on the procedures for filing and appealing intellectual property infringement cases.

The jurisdiction for intellectual property infringement cases cover both civil and criminal jurisdiction of the judiciary. The procedure for filing civil cases involve the use of writs of summons and appeals are usually lodged in motions setting for the grounds of appeal. The procedure in criminal cases involves the use of indictments.

37. Please describe the procedures for protecting confidential information in intellectual property infringement cases.

Evidence Act, Chapter 75 of the Laws of Belize, Revised Edition 1980 - 1990.

38. Article 43.1 of the TRIPS Agreement authorizes judges to order production of evidence necessary to substantiate a party's claims where that party has been unable to obtain such evidence from the opposing party. Please explain the provisions of the Belize laws or regulations that provide this authorization.

Proceedings to assert intellectual property rights, just like all other civil proceedings before the Supreme Court, will be subject to the Rules of procedure of the Supreme Court. Applications in

respect of intellectual property rights for copyright, patents, industrial designs, layout-designs, trademarks and new varieties of plants will be subject to the rules of discovery of documents provided in Order XXVIII, especially rules 10, 13 and 14.

39. Article 44.1 of the TRIPS Agreement authorizes judges to enjoin a defendant, except the government from infringing intellectual property rights. Please cite to the provisions of the Belize laws or regulations that provide this same authorization.

The provisions of the laws of Belize that provide for the remedy of an injunction are:

- (a) Copyright Bill, 2000 - Clause 36(1).
- (b) Industrial Designs Bill, 2000 - Clause 24(2)(b).
- (c) Patents Bill, 2000 - Clause 41(2)(a).
- (d) Protection of Layout Designs (Topographies) Bill, 2000 - Clause 24(2)(a).
- (e) Protection of New Plant Varieties Bill, 2000 - Clause 44(2)(a).
- (f) Trade Marks Bill, 2000 - Clause 49(2).

40. What provisions of the Belize laws or regulations authorizes judges to order the payment of monetary damages adequate to compensate for the injury done by the infringement, as outlined in Article 45.1 of the TRIPS Agreement?

The provisions of the laws of Belize that provide for the remedy of damages are:

- (a) Copyright Bill, 2000 - Clause 36(1).
- (b) Industrial Designs Bill, 2000 - Clause 24(2)(a).
- (c) Patents Bill, 2000 - Clause 41(2)(c).
- (d) Protection of Layout Designs (Topographies) Bill, 2000 - Clause 24(2)(b).
- (e) Protection of New Plant Varieties Bill, 2000 - Clause 44(2)(c).
- (f) Trade Marks Bill, 2000 - Clause 49(2).

41. Article 45.2 of the TRIPS Agreement authorizes judges to order the infringer to pay right holders enforcement costs and recovery of profits and/or statutory damages. Please cite to the provisions of the Belize laws or regulations that provide this same authorization.

The Laws of Belize provides for the payment of costs in civil actions. Costs are extensively provided for in order 66 of the Supreme Court Rules.

42. Article 46 of the TRIPS Agreement authorizes additional remedies including seizure of infringing goods, and the disposal of materials and implements used predominantly in the creation of infringing goods. Please cite to the provisions of the Belize laws or regulations to provide this same authorization.

The seizure of infringing goods and the disposal of materials and implements used predominantly in the creation of infringing goods is provided for in Belize laws as follows:

- (a) Copyright Bill, 2000 - Clause 37, 38, 119, 120 and 135.
- (b) Industrial Designs Bill, 2000 - Clause 24(2)(c).
- (c) Patents Bill, 2000 - Clause 41(2)(b).
- (d) Protection of Layout Designs (Topographies) Bill, 2000 - Clause 24(2)(c).
- (e) Protection of New Plant Varieties Bill, 2000 - Clause 44(2)(b).
- (f) Trade Marks Bill, 2000 - Clause 51.

43. According to Article 48.1 of the TRIPS Agreement, judges are authorized to indemnify a defendant including in the event of abuse by the plaintiffs. Please cite to the corresponding provisions in the Belize laws or regulations.

The effect of misjoinder of defendants in any proceedings before the Supreme Court is provided for under Order XVII, Rule 12 of the Supreme Court Rules. Although the awarding of costs in any cause or matter is generally a matter falling within the discretionary powers of the Supreme Court, where there is a misjoinder or non-joinder of defendants, the Court will strike out the action against the misjoined defendant and in that case, may award costs against the plaintiff, which costs are said, "to follow the event" (Order LXVI, Proviso to Rule 1 and Rule 2 of the same Order), which means that the loser of the action must pay the winner's costs. This process applies for and against the Crown and public authorities, subject to the provisions of the Crown Proceedings Act and the Public Authorities Protection Act, Chapter 24 of the Laws of Belize, Revised Edition 1980 - 1990.

K. ENFORCEMENT – PROVISIONAL MEASURES

44. Please explain how the Belize laws or regulations comport with Article 50 of the TRIPS Agreement.

- (a) Copyright Bill, 2000.

The provisional measures which may be made under this Bill are provisional orders for the delivery up of infringing articles. The rationale for this is to make sure that the infringing articles are in safe custody pending the final disposition of the matter. (Clauses 37, 54 and 119).

- (b) Industrial Designs Bill, 2000.

Like in the Copyright Bill, the Court is empowered to order delivery up of the infringing articles. The rationale is the same.

- (c) Patents Bill, 2000.

None.

- (d) Protection of Layout-Designs (Topographies) Bill, 2000.

Pursuant to Clause 24(2), an applicant may obtain interlocutory injunctions from the Court pending the final disposal of the case.

- (e) Protection of New Plant Varieties Bill, 2000.

Pursuant to Clause 44(2)(a), an applicant may be granted an interlocutory injunction by the Court forbidding the continued commission of an infringement of the holder of the breeder's right until the final determination of the matter.

- (f) Trade Marks Bill, 2000.

The Court may make a provisional order under Clause 51 ordering the delivery-up of the infringing goods, materials, or articles pending the final disposition of the matter.

L. ENFORCEMENT – SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

45. 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 Belize authorized to accept applications for a request to suspend release of suspected infringing goods and cite to the relevant law or regulations governing such authority.

The competent authority in Belize authorized to accept applications for a request to suspend release of suspected infringing goods is the Comptroller of Customs. The relevant law with regard to pirated copyright works is Clause 51 of the Copyright Bill. With regard to counterfeit trademark goods, the relevant law is Clause 74 of the Trade Marks Bill, 2000.

46. 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 Belize authorized to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authorization.

Same answer as for question 45.

47. 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.

See the relevant Clauses in the answer to question 45 above. The procedures required to obtain border protection, will also be augmented by regulations made under the Copyright Act and the Trade Marks Act.

48. 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.

Detailed border provisions to stop the exportation of goods suspected of infringing copyright or trademarks will be provided for in regulations made under the Copyright Act and the Trade Marks Act. As mentioned in the answer to question 1, both Acts contain provisions for national treatment for citizens of countries which are party to the relevant Convention. These provisions could be relied on by citizen right holders of such countries to stop the infringement of their goods in Belize.

49. 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 Belize.

The type of evidence required to constitute *prima facie* infringement in Belize is determined by conditions given under Clause 51(4)(ii) of the Copyright Bill, 2000, and Clause 74(3)(b) of the Trade Marks Bill, 2000. Further details will be given in Regulations made under both laws.

50. 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 Belize for a description to be "sufficiently detailed."

Provisions with regard to providing a "sufficiently detailed description of the goods" to be stopped, will be enacted in Regulations made under the Copyright Bill, 2000, and the Trade Marks Bill, 2000.

51. 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.

This portion will be regulated by Regulations to be made under the Copyright Act and the Trade Marks Act.

52. 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.

This portion will be regulated by regulations to be made under the Copyright Act and the Trade Marks Act. See Clause 51 of the Copyright Bill, 2000, and Clause 74(3)(d) of the Trade Marks Bill, 2000.

53. 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.

This portion will be regulated by Regulations made under the relevant legislation.

54. 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.

The competent authority is the Comptroller of Customs. The procedure involved will be provided for in Regulations made under the relevant legislations.

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

See Clause 51(1) of the Copyright Bill, 2000, and Clause 74(1)(b) of the Trade Marks Bill, Regulations made under the relevant legislations.

56. 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.

This portion will be regulated by Regulations made under the Copyright Act and Trade Marks Act.

57. 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 authorized to conduct such a review and describe the procedure. Please cite the law or regulations providing for these procedures.

See the answers to questions 56 and 35 above.

58. 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 pursuant to Article 55 and cite to the law or regulations providing that authority.

See the answers to questions 56 and 35 above.

59. 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.

See the answer to question 56 above.

60. Article 57 also requires that, where the decision on the merits favours the right holder, the competent authorities also may be given authority to give right holder information regarding the importer, consignee or consignor. If competent authorities in Belize 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.

See the answer to question 56 above

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

See the answer to question 56 above.

62. 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 Belize 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.

See the answer to question 42 above.

63. Please identify: (1) 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 (2) the competent authority that carries out the destruction or disposal of the goods.

The competent authority that decides the disposition of infringing goods is the Supreme Court. The destruction or disposal of goods as a result of a court order is usually done by court officials.

64. 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 Belize.

See Clause 51(3) of the Copyright Bill, 2000 and Clause 74(2).

M. ENFORCEMENT – CRIMINAL PROCEDURES

65. 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 of the law of Belize that fulfil that obligation and provide legal citations.

See Clause 52 and 121 of the Copyright Bill, 2000 and Clause 75 to 81 of the Trade Marks Bill, 2000.

66. 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 offence. Please explain the provisions in the laws of Belize that provide for such remedies, and describe the circumstances in which those remedies would be imposed. Please provide legal citations.

See the answer to question 42 above.

67. 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 of the laws of Belize that provide for such procedures and remedies. Please provide legal citations.

The provisions of the laws of Belize providing for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property are as follows:

- (a) Industrial Designs Bill, 2000 - Clause 24(5).

- (b) Patents Bill, 2000 - Clause 64.
 - (c) Protection of Layout-Designs (Topographies) Bill, 2000 - Clause 25.
 - (d) Protection of New Plant Varieties Bill, 2000 – Clause 45.
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