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REVIEW OF LEGISLATION¹

BARBADOS

This document reproduces the introductory statement made by the representative of Barbados, the questions addressed to the Permanent Mission of Barbados and the replies given in connection with the review of legislation at the Council's meeting of 27 to 28 November 2001.²

I. INTRODUCTORY STATEMENT

It is a pleasure for Barbados to formally present our TRIPS implementing legislation to the Council for review by WTO member States. Before outlining the extent to which Barbados' laws have been adjusted to comply with the TRIPS Agreement, I propose to commence this formal presentation by giving delegates an introductory background to the state of Barbados' intellectual property rights laws at the time of Barbados' adherence to the WTO/TRIPS Agreement in 1995.

A. INTRODUCTORY BACKGROUND

As a developing country, Barbados' obligations under the TRIPS Agreement entered into force on 1 January 2000. The point must be made that prior to assuming obligations under the TRIPS Agreement, Barbados already had a long tradition of providing protection for intellectual property rights and indeed, had legislation in the field of intellectual property rights and was a party to several international conventions for the protection of intellectual property rights for much of the twentieth century.

The *Patents Act* of 1903 and the *Patents and Designs Act* of the United Kingdom for example, were among the earliest pieces of legislation governing the grant of patents in Barbados. The *Merchandise Marks Act* of 1949, later renamed the *Trade Marks Act*, is also the earliest statute found in the field of trade marks, while in the field of copyright, the 1911 *Copyright Act*, of the United Kingdom applied to Barbados until its repeal in 1982.

¹ As regards laws and regulations notified by Barbados under Article 63.2 of the Agreement, reference is made to documents IP/N/1/BRB/1, IP/N/1/BRB/2, IP/N/BRB/C/1, IP/N/1/BRB/D/1, IP/N/1/BRB/D/2, IP/N/1/BRB/G/1, IP/N/1/G/2, IP/N/1/BRB/I/1, IP/N/1/BRB/L/1, IP/N/1/BRB/L/1/Add.1, IP/N/1/BRB/L/2, IP/N/1/BRB/P/1, IP/N/1/BRB/P/2, IP/N/1/BRB/P/3, IP/N/1/BRB/P/4, IP/N/1/BRB/P/5, IP/N/1/BRB/P/6, IP/N/1/T/1, IP/N/1/BRB/T/1/Add.1, IP/N/1/BRB/T/2.

² The minutes of this meeting were circulated as document IP/C/M/34.

The year 1979 constituted a significant milestone in the development of Barbados' intellectual property system. That was the year in which Barbados became a signatory to *the Stockholm Convention Establishing the World Intellectual Property Organization*. From that year onwards, the island of Barbados embarked on a conscious policy of modernising its system of intellectual property rights by bringing its legislative framework in line with international treaties for the protection of intellectual property which it subsequently became a party to.

In 1981, three pieces of industrial property legislation were approved by the Barbados Parliament. The first of these enactments was the *Patents Act, 1981-55* which was intended, *inter alia*, to protect certain inventions for which patents or other title of protection have been granted or applied for, so that the laws of Barbados would accord with international obligations to be adopted under the *Paris Convention* of 1883 and under the *Patent Co-operation Treaty* of 1970. Secondly, the *Trade Marks Act, 1981-56* was passed with the aim of protecting trade marks, service marks and collective marks registered under the Act, so that the laws of Barbados would accord with obligations under the 1957 *Nice Agreement concerning the International Classification of Goods and Services* and under the *Paris Convention* of 1883. Finally, the *Industrial Designs Act, 1981-57* was passed in 1981 for the purpose, *inter alia*, of protecting industrial designs registered under the Act so that the laws of Barbados would accord with obligations to be undertaken under the *Paris Convention* of 1883.

A further move towards modernization of Barbados' intellectual property laws occurred in 1982, with the enactment of the *Copyright Act, 1982-1* which was passed by Parliament and brought into law on 1 October 1982. The Act was intended to replace the 1911 copyright law of Barbados with laws that would accord with Barbados' obligations to be assumed under the *Berne Convention* of 1886.

Following the enactment of the abovementioned four (4) pieces of intellectual property legislation in 1981 and 1982 respectively, Barbados subsequently became a party to eight (8) international conventions and treaties governing the protection of copyright and related rights and the protection of industrial property between 1983 and 1986. These were as follows:

Date of membership			Convention or Treaty
1.	1983-03-18	-	Universal Copyright Convention (1952)
2.	1983-07-3	-	Berne Convention for the Protection of Literary and Artistic Works (1886);
3.	1983-07-30	-	Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1971);
4.	1983-09-18	-	Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961);
5.	1985-03-12	-	Paris Convention for the Protection of Industrial Property (1883);
6.	1985-03-12	-	Nice Agreement Concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (1957);

7. 1985-03-12 - Patent Cooperation Treaty (1970); and
8. 1986-02-28 - Nairobi Agreement on the Protection of the Olympic Symbol (1981).

A further significant step towards modernization of Barbados' intellectual property rights regime occurred in 1988 with the enactment of the *Corporate Affairs and Intellectual Property Office Act*, Cap. 21A which vested responsibility for corporate affairs and intellectual property rights in a specialized Office known as the Corporate Affairs and Intellectual Property Office headed by a separate Registrar.

Prior to 1988, responsibility for the grant and registration of trademarks, patents and industrial designs fell within the Supreme Court Registry headed by the Registrar of the Supreme Court. At that time, the Supreme Court Registry also functioned as a single entity for the deposit of records and documents relating to Supreme Court litigation, births and deaths, land titles, mortgages and charges, company matters as well as the registration of trade marks, patents and industrial designs. With the creation in 1988 of a single Office with responsibility for corporate and intellectual property matters, the administration of intellectual property rights in Barbados was brought in line with other countries internationally which had long since developed specialized agencies for the administration of intellectual property rights.

It will therefore be evident that when Barbados signed the Uruguay Round Agreements on 1 January 1995, Barbados was already familiar with, and had enacted intellectual property rights legislation in the areas of copyright, patents, trademarks and industrial designs.

However, when Barbados became a party to the Uruguay Round Agreements in 1995, our laws relating to the administration and protection of intellectual property rights, though generally compatible with international conventions and treaties to which the country was already a party, did not all meet the higher minimum standards stipulated in the TRIPS Agreement. Legislative amendment to existing enactments was therefore required in a number of areas. Furthermore, the TRIPS Agreement also introduced obligations in relation to completely new areas of intellectual property rights. Accordingly, the Parliament of Barbados was required to pass legislation to address these completely new subject areas of intellectual property rights required under the TRIPS Agreement.

B. THE STATUS OF BARBADOS' INTELLECTUAL PROPERTY RIGHTS REGIME ON 1 JANUARY 1995:

Based on the foregoing background, Barbados' legislative regime for intellectual property rights as at 1 January 1995 was therefore as follows:-

- (1) The *Patents Act*, 1981-55 (entered into force 1 January, 1985);
- (2) The *Patents Regulations*, 1984 (entered into force 14 May 1984);
- (3) The *Industrial Designs Act*, 1981-56 (entered into force 1 January, 1985);
- (4) The *Industrial Designs Regulations*, 1984 (entered into force 17 April, 1984)
- (5) The *Trade Marks Act*; 1981-57 (entered into force 1 January, 1985);
- (6) The *Trade Marks Regulations*, 1984 (entered into force 17 April, 1984);
- (7) The *Copyright Act*, 1982-1 (entered into force 14 August, 1998);
- (8) The *Corporate Affairs and Intellectual Property Office Act*, 1988-6 (entered into force 9 May 1988).

I will now outline the extent to which the Government of Barbados has between 1998 and 2001 amended its existing laws and introduced new intellectual property rights legislation to meet its obligations under the TRIPS Agreement.

C. THE EXTENT TO WHICH BARBADOS HAS BETWEEN 1995 AND 2001 ADJUSTED ITS LAWS AND PASSED NEW LEGISLATION TO MEET ITS TRIPS OBLIGATIONS:

In order to meet the higher standards of intellectual property protection required under the TRIPS Agreement, the following package of intellectual property laws was passed by the Barbados Parliament between 1998 and 2001:

- 1) *Copyright Act*, 1998-4 (entered into force 14 August, 1998);
- 2) *Protection Against Unfair Competition Act*, 1998-20 (entered into force February, 2001);
- 3) *Integrated Circuits Act*, 1998-21 (entered into force 19 February, 2001);
- 4) *Geographical Indications Act*, 1998-22 (entered into force 19 February, 2001);
- 5) *Integrated Circuits (Amendment) Act*, 2001-15 (entered into force 6 August, 2001);
- 6) *Trade Marks (Amendment) Act*, 2001-16 (entered into force 6 August, 2001);
- 7) *Protection of New Plant Varieties Act*, 2001-17 (entered into force 6 August, 2001);
- 8) *Patents Act*, 2001-18 (entered into force 6 August, 2001).

I now propose to examine each piece of legislation separately and to outline the amendments which have been made, as well as the new provisions which had to be put in place to ensure compatibility with the TRIPS Agreement.

1. The Copyright Act, 1998-4

This Act repealed the *Copyright Act* of 1982 and generally implements the intellectual property standards contained in Articles 9-14 of the TRIPS Agreement for copyright and its related rights. The Act has clarified the system of copyright protection especially in light of the rapidly developing technology and the need to provide adequate protection to copyright owners. This Act makes provision for moral rights in addition to economic rights in copyright; protects computer programs within the ambit of literary works, as well as provides protection for electronic databases.

The term of protection provided under the Act is for the duration of the right-holder's life, plus fifty (50) years for most categories of works; and fifty (50) years from date of first performance or broadcast, depending on the nature of the works.

The Act also clarified the nature of economic rights to which a copyright owner is entitled by making provision for "communication to the public" and "rental or public lending of the work" among others. The Act also made provision for protection for the neighbouring "mechanical" rights of producers of phonograms as well as performers.

The Act provided for criminal sanction for the unauthorised exploitation of copyrighted works as well as providing for civil remedies. Such remedies include the making of Orders by the Supreme Court for the impounding of infringing copies of works, and for the forfeiture and seizure of the instruments or equipment used to make such copies.

Finally, the Act makes special provision for the enforcement of rights at the border as stipulated in Articles 51-59 of the TRIPS Agreement and allows for the seizure of pirated copyright goods by the Customs Department at the request of the right holder.

2. The Protection Against Unfair Competition Act, 1998-20

The concept of "unfair competition" is not a new one and has since 1900 been defined in Article 10*bis*(2) of the Paris Convention to mean "any act of competition contrary to honest practices in industrial or commercial matters". However, until the TRIPS Agreement, the provision of

protection against unfair competition was optional and countries were under no mandate to expressly provide for such protection under their law. Since Barbados did not have any legislation dealing with this subject matter prior to January 1, 1995, this was another area in which new legislation had to be passed to ensure compatibility with the TRIPS Agreement.

The Act implements Articles 39-40 of the TRIPS Agreement and, *inter alia*, defines the acts or practices which amount to unfair competition, or can cause dilution of the goodwill or reputation of goods or services. Commercial activity designed to mislead the public in terms of the value of goods and services, and the disclosure or acquisition of secret information relating to a commercial enterprise, without the consent of the rightful owner of the information are also prohibited under the Act.

The Act gives persons injured or likely to be injured by an act of unfair competition a statutory right to commence civil proceedings in the High Court for an injunction to prevent or prohibit the continuation of the act of unfair competition and enables an award of damages to be made in respect of the unfair competition.

Also included in the definition of unfair competition are any act or conduct that consists of or results in an unfair commercial use by a Competent Authority or by other persons as a result of the improper disclosure (without the consent of the right holder) by a competent authority of secret tests or other data concerning pharmaceutical or agricultural chemical products that utilise new chemical entities which secret tests or other data had been submitted to the Competent Authority for the purpose of obtaining approval of the marketing of such products.

The Act creates a criminal offence which may be instituted against any officer of a Competent Authority (to which secret information secret data or information pertaining to a pharmaceutical or agricultural chemical product has been submitted for the purpose of obtaining marketing approval) who discloses such data or information otherwise than as provided in the section.

3. The Integrated Circuits Act, 1998-21

The provision of protection to the lay-out designs (topographies) of integrated circuits is another subject area of intellectual property rights protection in which Barbados had no legislation at 1 January 1995 and for which new legislation was required to ensure compatibility with the TRIPS Agreement.

The Act implements Articles 35-38 of the TRIPS Agreement and provides protection for the layout designs of integrated circuits which are registered under the Act. In accordance with Article 36 of the TRIPS Agreement, the Act specifically prohibits any act by a person, without the express consent of the right holder whereby a protected design is reproduced, imported, sold or otherwise distributed for commercial purposes.

In accordance with Article 37 of the TRIPS Agreement, the protection under the Act does not extend to innocent acts of reproduction, importation, sale or distribution of an integrated circuit incorporating an unlawfully reproduced design. In these circumstances, section 7(2) of the Act requires payment to the right holder of an amount equal to a reasonable royalty as would be payable under a freely negotiated licence in respect of such a lay-out design.

The period of protection under the Act is ten (10) years, commencing from the date of first commercial exploitation or the date of filing whichever is earlier. As with other classes of industrial property, applications for registration under the Act are made to the Registrar of the Corporate Affairs and Intellectual Property Office.

4. The Integrated Circuits (Amendment) Act, 2001-15

Earlier this year, it became necessary to pass three important amendments to the 1998 *Integrated Circuits Act* in order to (a) clarify the criteria for protection under section 3 of the Act; (b) provide a right of appeal from decisions of the Registrar and; (c) confer a power on the Minister to make the subsidiary regulations for implementing the substantive provisions of the Act.

The Amendment Act was passed earlier this year and brought into force by publication in the *Official Gazette* with effect from 6 August 2001.

5. The Geographical Indications Act, 1998-22

Once again, this was another subject area of intellectual property rights protection in which Barbados had no legislation prior to 1 January 1995 and for which new legislation had to be enacted for TRIPS compatibility.

The Act implements Articles 22-23 of the TRIPS Agreement and provides for the protection of geographical indications principally by means of a registration system. Once again, responsibility for the registration of geographical indications is vested in the Registrar of the Corporate Affairs and Intellectual Property Office. The Act, however, expressly states that protection under the Act is accorded to geographical indications whether or not they are registered under the Act.

In accordance with Article 22 of the TRIPS Agreement, section 20 of the Act enables a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated to be refused or invalidated, where use of the indication would be such as would mislead the public as to the true place of origin of the goods.

Again, as required by Article 23 of the TRIPS Agreement, provision is made in section 21 of the Act for the refusal or invalidation of a trademark which contains or consists of a geographical indication identifying wines or for spirits where such wines or spirits do not originate in the territory indicated.

The Act provides the legal framework for interested persons to commence civil proceedings in the High Court to cancel the registration of a geographical indication or rectification of the register on the grounds that it does not comply with the statutory requirements in relation to such indications. Interested parties may also institute proceedings in the High Court to prevent the improper use of geographical indications and other conduct which constitutes an act of unfair competition. In addition to the grant of an injunction, the Court may award damages and such other remedy or relief as the Court thinks fit.

The Act also creates a criminal offence which may be heard before a magistrate court relating to the improper use and designation of geographical indications.

6. The Trade Marks (Amendment) Act, 2001-16

As was outlined earlier in Part B of this presentation, when Barbados became a party to the TRIPS Agreement, the 1981 *Trade Marks Act*, Cap. 319 was the applicable enactment governing the grant and registration of trademarks. However, following a review of its provisions, it became necessary to introduce a number of miscellaneous amendments to ensure complete compliance with Barbados' TRIPS obligations.

An amendment to the *Trade Marks Act* was passed earlier this year and entered into force by publication in the *Official Gazette* on 6 August 2001.

In accordance with Article 20 of the TRIPS Agreement, section 5A of the Act expressly provides that the use of a trademark in the course of trade shall not be unjustifiably encumbered by any special requirement, including use with another trademark, use in a special form or use in a manner detrimental to the mark's capability of distinguishing the goods or services of one enterprise from those of another enterprise.

The Amendment Act also provides in sections 50A to 50E, *inter alia*, for the imposition of criminal penalties in cases of wilful trademark counterfeiting as contemplated by Article 61 of the TRIPS Agreement and introduces judicial procedures for the forfeiture and destruction of: (a) goods which, or the packaging of which bears signs identical to or likely to be mistaken for a registered mark; (b) material intended to be used for labeling, packaging or advertising of goods or; (c) articles specifically designed or adapted for making counterfeit copies of a registered mark.

In accordance with the special requirement related to border measures contained in Articles 51- 60 of the TRIPS Agreement, sections 53A to 53M of the *Trade Marks (Amendment) Act, 2001-16* set out the procedures which will enable rights holders to request the detention at the border of counterfeit trademark goods pending the institution of judicial proceedings for infringement in respect of the mark.

7. The Protection of New Plant Varieties Act, 2001-17

This was another subject area in which new legislation was required to ensure compatibility with the TRIPS Agreement.

In accordance with Article 27.3(b) of the TRIPS Agreement, Barbados opted to pass *sui generis* legislation for the protection of the rights of plant breeders and developers of new plant varieties.

The Act vests responsibility for the administration of the Act in the Registrar of Corporate Affairs and Intellectual Property Office jointly with the Chief Agricultural Officer who will assist the Registrar with the technical aspects of the application and the provision of technical advice and support in relation to the application.

The Act makes provision for the grant of plant breeder's rights in respect of (a) vines, forest trees, fruit trees and ornamental trees for a period of twenty-five (25) years from the grant and (b) all other genera or species for a period of twenty (20) years after the grant thereof.

As with the other categories of industrial property rights, the Act provides for the possibility of appeals to the High against any decision or act of the Registrar [section 43]; for the institution of an action in the High Court for invalidation of the plant breeder's right in specified circumstances [section 42]; and for the institution of civil proceedings in respect of any act which infringes the plant breeder's right.

The Act also facilitates the grant of an injunction prohibiting the infringement, the award of damages for the infringement, the making of an order for the delivery up and destruction of any product relating to the infringement, the making of an order for an account of any profits derived by the defendant from the infringement and a declaration that the plant breeder's right is valid and has been infringed by the defendant. [section 44].

The Act also creates criminal offences in relation to the wilful offering for sale or marketing of propagating material of a protected variety and the wilful making use of the registered variety denomination of a variety protected in Barbados or the making use of a denomination likely to cause confusion with a protected variety.

8. The Patents Act, 2001-18

As was outlined earlier in Part B of this presentation, when Barbados became a party to the TRIPS Agreement, the 1981 *Patents Act*, Cap.314 was the applicable enactment governing the grant and registration of patents in Barbados. However, following a review of its provisions, it was decided to repeal the existing Act with appropriate savings for pending applications and granted patents and to enact a completely new patents law in order to clarify and modernize the existing procedures and bring patents law and practice in Barbados into conformity with modern trends in patent law and practice internationally.

In accordance with Article 27.1 of the TRIPS Agreement, patents are available in Barbados in all field of technology for inventions (whether relating., to a product or to a process) which meet the criteria for patentability laid down in the Act. Section 11 of the Act excludes from patentability inventions which involve, *inter alia*, discoveries, scientific theories and mathematical methods, diagnostic methods practiced on human beings or animals, methods for treatment of human beings or animals by surgery or therapy, plant varieties, animal varieties and biological processes for the production of plants other than microbiological processes and the products of those processes and inventions, the commercial exploitation of which would be contrary to public order or morality or which is prejudicial to human or animal health or to plant life or to the environment.

In accordance with Article 33 of the TRIPS Agreement, the new Patents Act increases the period of duration for the grant of a patent in Barbados from fifteen (15) years to twenty (20) years from the filing date.

The new Act now gives a more precise definition of the term "filing date" and unlike the 1981 Act clarifies the procedures for the processing of international applications filed under the Patent Cooperation Treaty. Such applications are accorded the international filing date which is treated as the actual filing date in Barbados.

As with the other categories of industrial property rights, the Act provides for the possibility of appeals to the High Court against any decision or act of the Registrar [section 51]; for the institution of an action in the High Court for invalidation of the patent in specified circumstances [section 56]; and for the institution of civil proceedings in respect of any act which infringes, patent.[section 52].

The Act also creates a criminal offence in relation to the deliberate infringement of any right vested in any other person under the Act. [section 62.]

D. AREAS OF OUTSTANDING LEGISLATION STILL REMAINING TO BE FINALIZED:

It should be pointed out that Barbados is still in the process of finalizing the last few remaining areas of legislation required for complete compatibility with the TRIPS Agreement. Cabinet approval has also been given for amendment to the *Copyright Act*, 1998 and the making of the following pieces of subsidiary legislation which are now scheduled to be published and put in place before the end of the current year. The remaining pieces of legislation to be finalized are:

1. Copyright (Amendment) Bill, 2001:

[Note: This Bill would amend the 1998 *Copyright Act* to clarify, *inter alia*, the circumstances in which charitable organizations may use copyright material without a licence. The Amendment Bill is being finalized and is likely to be debated in the Barbados Assembly before the end of the year.]

2. Integrated Circuits Regulations, 2001:

[Note: These Regulations would give further effect to the Act by regulating the application process, the procedure on opposition hearings. The Regulations will also make provision for the applicable forms and fees and generally give effect to the Act. The text of the Regulations has been finalized and the Regulations will shortly be signed and published.]

3. Geographical Indications Regulations, 2001:

[Note: These Regulations would give further effect to the Act by regulating the application process and setting out the applicable forms and fees and generally give effect to the Act. The text of the Regulations has been finalized and the Regulations will shortly be signed and published.]

4. Protection of New Plant Varieties Regulations, 2001:

[Note: These Regulations will govern the procedure to be followed in the examination and administration of the applications for the grant of plant breeder's rights as well as make provision for the applicable forms and fees and generally give effect to the Act. The text of the Regulations has been finalised and the Regulations will shortly be signed and published.]

5. Protection of New Plant Varieties Order, 2001:

[Note: This Ministerial Order to be made under section 5 of the Act, will list some 45 plant genera and species to which the Act will apply. The Order has been approved by Cabinet and the Order will shortly be signed and published.]

6. Copyright (Prohibited Imports) Regulations, 2001:

[Note: These Regulations serve to give effect to section 49 of the Act and set out the forms to be employed in relation to the "border measures" applicable in respect of pirated copyright goods. The text of the Regulations is currently being finalised and will need to be approved by the Cabinet before they are made by the Minister and published.]

7. Copyright (Copying of Protected Works by Librarians) Regulations, 2001:

[Note: These Regulations serve to give effect to section 60-64 of the Act and set out the circumstances in which certain categories of librarians and archivists may without infringing any copyright subsisting in a protected work, make and supply in whole or in part copies of such works. The text of the Regulations is currently being finalized and will need to be approved by the Cabinet before they are made by the Minister and published.]

8. Copyright Tribunal Regulations, 2001:

[Note: These Regulations serve to give effect to Part VII of the Act in relation to the functioning of the Copyright Tribunal. The text of the Regulations is currently being finalized and will need to be approved by the Cabinet before they are made by the Minister and published.]

E. THE TRIPS NOTIFICATION PROCESS, QUESTIONS RECEIVED BY BARBADOS AND OUR RESPONSES THERETO:

On or about 25 May 2001 in accordance with Article 63.2 of the TRIPS Agreement, Barbados forwarded to its Permanent Mission in Geneva for transmission to the TRIPS Council, the prescribed Notification documents consisting of :

- Barbados' main dedicated intellectual property laws and regulations listed in Annex I;
- Relevant Other laws and regulations listed in Annex II;
- English texts of all laws listed in Annex I and II;
- Barbados' Responses to the Checklist on Enforcement.

In September, 2001, the texts of four additional enactments which were Gazetted on 6 August 2001, were forwarded to the Permanent Mission in Geneva for transmission to the TRIPS Council. These Acts were, the *Integrated Circuits (Amendment) Act*, 2001-15, the *Trade Marks (Amendment) Act*, 2001-16, the *Protection of New Plant Varieties Act*, 2001-17 and the *Patents Act*, 2001-18.

To date, Barbados has received the following questions relative to the Review of its TRIPS implementing legislation, namely:

- (1) Two (2) questions from Canada to which Barbados' written responses were submitted through the Permanent Mission in Geneva;
- (2) Eight (8) questions from Switzerland to which Barbados' responses were submitted through the Permanent Mission in Geneva;
- (3) Fifty-eight (58) questions from the European Communities and their Member States;
- (4) Thirty-four (34) questions from the United States of America; and
- (5) One (1) question from Japan; and
- (6) One question from Australia.

The Canadian government was largely concerned about Barbados' position on infringement of trademarks and the reciprocal protection afforded to owners of copyrighted works from other jurisdictions in Barbados.

The questions received from Switzerland were wider in scope in terms of their subject matter. The Swiss Government wished to have details of the process involved in applications for trademarks; whether there was adequate protection for patents and plant varieties; the extent of protection of undisclosed information; and the plans and programmes of the Government of Barbados in relation to enforcement of intellectual property laws.

The questions received from the European Commission, the United States of America and Japan were, however, only received by the persons responsible for preparing responses last week. While the question from Australia was received by the Barbados Mission in Geneva on Monday It was therefore not possible to prepare responses to these questions in time for this week's Review Meeting. Responses to the questions from the E.C, the USA, Japan and Australia are under preparation and will be forwarded to the TRIPS Council as soon as possible.

F. BARBADOS' POSITION IN RELATION TO ADDITIONAL QUESTIONS:

I wish to thank you Chairman and distinguished delegates for your attention and trust that this presentation, together with the detailed written responses to the questions from Canada and

Switzerland previously submitted (and those to the questions from the European Commission, the United States of America, Japan and Australia currently under preparation) will mean that there are no further questions.

Should further written follow-up questions be received from any country during the course of the Meeting, the Barbados delegation is proposing, depending on the volume and complexity of such questions, to prepare a written response to each question for submission to the Council in time for the next TRIPS Council Meeting.

II. RESPONSE TO A QUESTION POSED BY AUSTRALIA

PATENTS (INCLUDING PLANT VARIETY PROTECTION)

How does your country provide protection for new plant varieties as required under Article 27.3(b)? If your legislation is based on the UPOV system, on which UPOV Act was it modelled? Can new plant varieties be protected by patent in your country?

In Barbados, the protection of plant varieties as contemplated in Article 27.3 is not considered under the Patents Act, 2001-18 but instead under the *sui generis* provisions of the Protection of New Plant Varieties Act 2001-17. Section 11 of the Patents Act 2001-18 provides that

- "(1) Whether or not they constitute an invention within the meaning of this Act, the following are not patentable under this Act, namely,
- (a) discoveries, scientific theories and mathematical methods;
 - (b) schemes, rules or methods for
 - (i) the carrying on of business;
 - (ii) the performing of acts of a mental nature only; or
 - (iii) the playing of games;
 - (c) methods for treatment of human beings or animals by surgery or therapy;
 - (d) diagnostic methods practised on human beings or animals;
 - (e) plant varieties, animal varieties and essentially biological processes for the production of plants other than microbiological processes and the products of those processes; or
 - (f) an invention, the commercial exploitation of which would be contrary to public order or morality or which is prejudicial to human or animal health or to plant life or the environment.
- (2) Paragraphs (c) and (d) of subsection (1) do not extend to products invented for use in the methods referred to in those paragraphs."

The exceptions contained in paragraphs (a) and (b) do not fall within the definition of patentable development as set out in Article 27.1 of the TRIPS Agreement. Paragraphs (c) to (f) were drafted in accordance with the provisions of Article 27.3 of the TRIPS Agreement. The text of the Patents Act 2001-18 has been notified to the World Trade Organization.

Having regard to the foregoing Act, there is *sui generis* provision in the Protection of New Plant Varieties Act 2001-17 for new plant variety protection. The procedures for obtaining plant variety protection are specifically based on the UPOV Model Law for Small Developing Countries obtained through the World Intellectual Property Organization (WIPO). Other aspects have been modelled on the Trinidad & Tobago Protection of New Plant Varieties Act. The text of the Protection of New Plant Varieties Act 2001-17 has been notified to the World Trade Organization and is available for examination by Member states. Barbados is not a party to either of the UPOV Conventions.

III. RESPONSES TO QUESTIONS POSED BY CANADA

1. What recourse do right holders have in respect of wilful trademark counterfeiting or copyright piracy on a commercial scale, as required by Article 61?

All rights holders may seek redress for any infringement of their legal rights through civil proceedings in the Supreme Court as outlined in Barbados' response to question 1 of the Checklist of Issues on Enforcement.³

Further, please refer to our response to question 24 of the Checklist of Issues on Enforcement.¹ This response reads as follows:

It is an offence under section 48 of the Trade Marks Act, for a person to apply to goods or their packaging a trademark identical to or capable of being confused with a registered trademark. It is also an offence to sell or let for hire, offer or expose of sale or hire, or to distribute, goods that bear such an infringing trademark. Possession of such goods with the intent to do any of the acts mentioned above will also constitute an offence.

It is an offence for a person to apply an infringing mark to goods without consent of the registered owner of the mark, with a view to enriching himself or causing loss to another. This applies to use of any item used in the reproduction of that infringing mark.

It is also an offence to make an item that will enable a person to make copies of an infringing mark.

Under section 49(1) of the Trade Marks Act it is an offence for a person to knowingly infringe any rights in a registered trademark vested in a person under the Act. The penalty for infringement under section 50 of the Act before a Court of summary jurisdiction is a fine of BD\$10,000.00 or a term of imprisonment of two years, or both; in the case of a continuing offence, a further fine of BD\$1,000.00 for each day the offence continues may be imposed.

Under section 46 of the Copyright Act, the penalty for infringement for profit-making purposes by a person knowing or having reason to believe that he is committing an infringement, in summary conviction is a fine of BD\$25,000.00 and/or to one year's imprisonment. The defendant convicted on indictment may receive a fine of BD\$100,000 and/or three years imprisonment.

Where there has been no decision on such remedies in civil proceedings, the Magistrate or Judge has the inherent jurisdiction to order the impounding of suspected copies of works on sound recordings, as well as the implements that could be used for the making of such copies; to order the forfeiture and seizure of all copies of works or sound recordings manufactured, reproduced, distributed, sold or otherwise use, intended for use or possessed with intent to use in contravention of

³ Document IP/N/6/BRB/1.

the rights of the owner and all plates, moulds, masters, tapes, film negatives or other articles by means of which such copies of works or sound recordings may be reproduced and all electronic mechanical or other devices for manufacturing, reproducing or assembling such copies of works or sound recordings; to order the destruction or other reasonable disposition of infringing copies.

Where an offence under section 46 committed by a body corporate is proved to have been committed with the consent or connivance or attributable to neglect on the part of any director, manager, secretary or person purporting to act in any capacity, he as well as the body corporate is guilty and liable to the above penalties.

The court retains inherent jurisdiction to forfeit counterfeit goods on the application of a person under the section. On such forfeiture, the court can order the destruction of any such goods; or cause the offending sign to be erased or obliterated and make an order for costs.

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

Section 142 of the Barbados Copyright Act provides that:

- "(1) Subject to this section, the Minister may, by order, provide for reciprocal treatment to be given to any country that provides protection in respect of Barbados:
- (a) in relation to persons who are citizens or permanent residents of that country as they apply to persons who are citizens or permanent residents of Barbados;
 - (b) in relation to bodies incorporated or established under the laws of that country as they apply in relation to bodies incorporated or established under the laws of Barbados;
 - (c) in relation to literary, dramatic, musical or artistic works, sound recordings, films and editions first published in that country as they apply in relation to such work, sound recordings, films and editions first published in Barbados;
 - (d) in relation to broadcasts made from or cable programmes sent from that country as they apply in relation to broadcasts made from or cable programmes sent from Barbados;
 - (e) in relation:
 - (i) to performances taking place in that country or given by an individual who is a citizen or habitual resident of that country;
 - (ii) to performances incorporated in a phonogram which is protected by Article 5 of the Rome Convention; or
 - (iii) to performances; not being fixed on a phonogram that are carried by a broadcast which is protected by Article 6 of the Rome Convention, as they apply in relation to performances taking place in Barbados or given by an individual who is a citizen or habitual resident of Barbados.
- (2) An order made under subsection (1) may apply any provision of this Act in relation to any country:

- (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 other classes of case as may be so specified.
- (3) An order shall not be made under subsection (1) in relation to any country unless:
 - (a) the Country is a Convention country; or
 - (b) a country as to which the Minister is satisfied that provision has been made or will be made under the law in respect of the class of works or, as the case may be, the performances, to which the order relates, giving adequate protection to the owner of copyright under this Act or, as the case may be, to Barbadian performances as defined in section 143(4).
- (4) In this section 'Convention country' means a country that is party to a Convention relating to copyright or performers rights, as the case may be, to which Barbados is also a party."

In light of this section, the relevant Minister may enter into reciprocal agreements with other countries in order to make protective arrangements for copyrighted works created by non-Barbadians. At common law, Barbados treats all copyrighted work, whether indigenous or imported, as protected.

IV. 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) Please see section 49 (1) of the Patents Act 2001-18. This section, concerning the circumstances in which the Crown may exploit a patent, is fully compliant with the provisions of Article 31 of the TRIPS Agreement. Section 11 of the Act is also compliant with Article 27.3 of the Agreement.
- (ii) Sections 51-84 and sections 142- 151 of the Copyright Act 1998 respectively make provision, inter alia, for the use of copyrighted works for public use, fair dealing and in libraries; for the purpose of reporting of current events, reading or recitation of published literary or dramatic works in public, the playing of sound recordings for the benefit of a club or other charitable organization and the reciprocal treatment and/or protection of such works in other territories.
- (iii) Section 40 of the Protection of New Plant Varieties Act 2001-17 makes provision for the issuing of compulsory licenses in circumstances similar to those set out in section 49(1) of the Patents Act (see above).
- (iv) Section 18 of the Integrated Circuits Act 1998 (as amended) makes provision for the exploitation of integrated circuits in particular circumstances.

B. COPYRIGHT AND RELATED RIGHTS

2. Please explain the copyright protection given to authors of databases or compilations of data as required by Article 10.2 of the TRIPS Agreement and please also confirm where in the Act a definition of databases and a description of the protection given is provided.

In Barbados, compilations and computer programmes are protected in section 2 as literary works. (Please refer to the definitions of "literary works" and "computer programme" in the Act.) Protection of "literary works" is provided under the terms of section 6. No explicit definition of "database" is contained in the Act. Nonetheless, the term "compilation", given its ordinary dictionary meaning, will extend to all databases whatever their mode or form of expression.

3. Please explain whether the protection for sound recordings extends to sound recordings of musical works only or also to other types of phonogram, and if so what types? Please explain whether the rental right enumerated in section 76 (c) of the Act applies to all cinematographic works or only to films. Please explain the definition of films for the purposes of the Act.

In section 2 of the Barbados Copyright Act, 1998-4, "sound recordings" are defined as:

- (a) a recording of sounds from which sounds may be reproduced, or
- (b) a recording of the whole or any part of a literary, dramatic or musical work from which sounds reproducing the work or part thereof may be produced regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced. (emphasis added)

The protection afforded under the Act for sound recordings therefore applies to all sound recordings, however fixed or recorded.

The rental right in section 76(c) applies to cinematographic images whether recorded on film, electronic or other medium capable of producing a moving image having regard to the definition of "film" in section 2 which means "a recording on any medium from which a moving image may by any means be produced".

4. Section 77.1 of the Act - Please explain how this provision (in relation to sound recordings and computer programmes) as applied in practice. What conditions are applied to ensure that the right of authors in Article 11 of the TRIPS Agreement to authorize or prohibit the commercial rental to the public of originals or copies of their works is respected?

This situation has not yet arisen in practice and to date there has been no necessity for a Ministerial order to be passed under this section.

5. Please state how your legislation grants the retroactive protection provided pursuant to Article 18 of the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention") (the obligation of which derives from Article 9 of the TRIPS Agreement) and Article 14.6 of the TRIPS Agreement.

Please refer to section 151 of the Copyright Act which provides the necessary transitional protection.

6. Please define what constitutes a "reasonable extract" for the purposes of Section 72.1 of the Act.

In practice, the author will determine what is reasonable. If an objection is taken as to the size of the extract taken from his work for use in the public reading or recitation, the issue of reasonableness will ultimately become a matter for determination by the High Court which in the course of hearing the infringement action will make a determination of the "reasonableness" or otherwise of the extract used.

7. Please explain whether the *droit de suite* provided for in Article 14ter of the Berne Convention is protected in your legislation.

The right of *droit de suite* is not contemplated in Barbadian law.

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

Under Barbados law, all administrative decisions are capable of being reviewed by or appealed to a judicial body. Provisions establishing a right of appeal to the Courts may be found under all intellectual property rights statutes. [See for example section 101(4) and 104 of the Barbados Copyright Act, 1998-4, section 47 of the Trade Marks Act, Cap. 319, section 19(2) of the Geographical Indications Act, 1998-22 and section 51 of the Patents Act, 2001-18.] Additionally, the Administrative Justice Act Cap 109B of the Laws of Barbados provides a general statutory remedy of judicial review which is available in respect of most administrative acts or omissions where an administrative body or other authority performs an administrative or quasi-judicial function which arises either under a statute or the Constitution.

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

Please refer to section 135 (1) of the Copyright Act, 1998-4, and Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1). Also refer to section 49E of the Trade Marks (Amendment) Act, 2001-16.

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

It should be noted that in Barbados the competent authority for dealing with enforcement in relation to the importation of infringing goods is the Comptroller of Customs. Under the provisions of section 49(6) (b) (iv) of the Copyright Act, 1998-4, the Comptroller is empowered to require of a plaintiff indemnification and security against the possibility of liability or expense incurred by him as a result of the suspension or detention of articles by the Customs Department.

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

Sections 207 and 210 of the Customs Act and section 49 of the Copyright Act make provision for the implementation of provisional measures in respect of the importation of infringing copies of copyrighted works. Please refer to the Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1) for a detailed discussion of the provisional measures which may be employed in Barbados in relation to the alleged infringement of intellectual property rights.

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

Please refer to our answer to question 10.

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

The procedures implement Article 51 of the TRIPS Agreement and accordingly only relate to the importation of counterfeit trademark or pirated copyright goods.

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

Please see our response to question 9.

15. Please indicate the threshold of the de minimis imports exception provided for in Section 49(5).

In practice, the *de minimis* exception permits the importation of no more than five copies or less of a work for private and domestic use. Please also see our response to question 25 for the legal basis for this rule in relation to trademarks.

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

Please see Barbados's responses to questions 3 and 4 of the Checklist of Issues on Enforcement for a detailed response to this question.

C. TRADEMARKS – TRADE MARKS REGULATIONS 1984 AND TRADE MARKS (AMENDMENT) ACT 2001

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

Under the provisions of the Trade Marks Act, 1981(as amended), section 4(1)-(3) contains the general definitions of "trade mark", "service mark", "collective mark" used in the Act. Section 4(4) states that:

"...marks can consist of arbitrary or fanciful designations, names, pseudonyms, geographical names, slogans, devices, reliefs, letters, numbers, labels, envelopes, emblems, prints, stamps, seals, vignettes, borders and edgings, combinations or arrangements of colours and shapes of goods or containers."

The above definition is subject to objections which may be taken to the registration of the mark on relative or absolute grounds, including the potential of a mark to mislead, deceive or be confused with a previously registered mark or a well-known mark, well-known names, and marks containing a geographical indication of such a nature as would mislead the public as to the true place of origin of the goods. [Please refer to sections 8 and 9 of the Trade Marks Act, 1981(as amended by the Trade Marks (Amendment) Act 2001-16) and section 20 of the Geographical Indications Act, Cap. 1998-22.]

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

Service Marks are protected by section 4(2) of the Act; trade names are also protected within the ambit of section 4(4) (see the response to question 17). Also note that section 2 of the Act defines the term "mark" to include trade marks, service marks and collective marks. While containers are specifically protected (as set out in the response to question 17) elements such as sounds, smells and perfumes are not protected in Barbados.

19. 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.

There are no requirements for use as a condition of initial trademark registrations in Barbados. Section 26 of the Act which previously provided that any application for renewal of a mark must be accompanied by a statement that the mark was in use during the year preceding the date of application for renewal; or that the mark was in disuse through circumstances beyond the control of the holder of the mark, has been amended by the Trade Marks (Amendment) Act 2001-16 to remove the requirement for use.

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

A trademark may be registered indefinitely at 10-year intervals on payment of the relevant fee, as provided by section 25 of the Act.

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

There are no special requirements restricting how a mark may be used in the course of trade. In particular, please note the provisions of section 5A of the Trade Marks Act, 1981 (as amended by the Trade Marks (Amendment) Act 2001-16 which provides that:

"The use of a trade mark in the course of trade shall not be unjustifiably encumbered by any special requirement, including use with another trade mark, use in a special form, or use in a manner detrimental to the mark's capability of distinguishing the goods or services of one enterprise from those of another enterprise."

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

Please refer to Barbados's responses to questions 5, 10, 11 and 12 of the Checklist of Issues on Enforcement for a detailed discussion of the provisional measures which may be employed in Barbados in relation to the alleged infringement of intellectual property rights. Additionally, protective measures are also available to the registered owner and licensee of a mark in accordance with sections 38-40 of the Trade Marks Act, 1981 in cases of the infringement or imminent infringement of the mark.

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

In Barbados the competent authority for dealing with enforcement in relation to the importation of infringing goods is the Comptroller of Customs. Please refer to sections 53A to 53M of the Trade Marks (Amendment) Act 2001-16 for the procedure governing the suspension of the release of counterfeit goods by the customs authorities.

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

The procedures implement Article 51 of the TRIPS Agreement and accordingly only relate to the importation of counterfeit trademark or pirated copyright goods.

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

Section 53M of the Trade Marks (Amendment) Act 2001 provides that

"...the importation by an individual for his own personal use, of not more than 5 of the same items bearing a registered trade mark in respect of which a notice has been given in accordance with section 53A shall be permitted, but the Comptroller of Customs may permit the importation of a greater number of items if he is satisfied that they are for the personal use of the individual."

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

Please refer to sections 50A-50E of the Trade Mark (Amendment) Act 2001 for the criminal procedures and penalties to be applied in cases of wilful trademark counterfeiting.

D. GEOGRAPHICAL INDICATIONS – GEOGRAPHICAL INDICATIONS ACT 1998

27. Please confirm whether the same protection is given to geographical indications that are registered and those that are not registered under the Act. Please explain any dissimilarities.

Under the provisions of section 3 (1) of the Geographical Indications Act, 1998-22:

"Protection under this Act is accorded to geographical indications whether or not they are registered."

28. Please confirm the analysis that will be used in determining whether, in line with Article 22.3 the geographical indication is identical with a term used in common language as the common name for such goods or services in Barbados. Please provide examples of such words considered as generic in your jurisdiction.

Please see section 2 (c) of the Geographical Indications Act, 1998-22, which is couched in identical wording to Article 22.1 of the TRIPS Agreement. Section 5 of the Act excludes from protection as geographical indications, indications that (a) do not correspond to the definition in section 2(c) of the Act, (b) offend against public order or morality or (c) are not or cease to be protected in their country of origin or which have fallen into disuse in that country. Due to the absence of applications and the lack of litigation relating to this subject matter of intellectual property in Barbados, we are unable to provide examples as requested.

E. INDUSTRIAL DESIGNS – INDUSTRIAL DESIGN REGULATIONS 1984 AND INDUSTRIAL DESIGNS ACT CAP. 309

29. Please explain whether there is a requirement in your legislation that an industrial design be original.

Section 9 of the Industrial Designs Act, 1981 does not use the concept of original. However, the Act stipulates that an industrial design may not be registered unless it is "new". Section 11 explains that a new design is one which:

"...had not been made available to the public through description, use, or in any other manner, anywhere, at any time before the date of an application under this Act or before the priority date properly claimed for the industrial design."

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

The definition of an industrial design in section 4 makes no specific mention of technical or functional considerations. It merely defines an industrial design as:

"(a) any composition of lines or colours; or

(b) any 3 dimensional form whether or not associated with lines or colours,

that gives a special appearance to the product of industry or handicraft and serves as a pattern for a product of industry or handicraft."

Textile designs which meet the above criteria would be protected as industrial designs.

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

Section 5 (1) (b) of the Industrial Designs Act, 1981 provides that the registered owner of the design possesses the right to prevent other persons from "importing, offering for sale or exposing for sale" any article in or by which the design is reproduced. A registered owner of an industrial design or a licensee under a licence-contract may also take protective measures set out in sections 37-39 to prevent infringement or to prohibit further infringement of an industrial design.

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

The Act does not contemplate the use of compulsory licences for industrial designs. Licence contracts, as provided for in section 29, are voluntary in nature.

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

Section 26 provides that the registration of an industrial design is valid for a period of 5 years from the date of the initial application; the applicant may be entitled to 2 consecutive renewal periods of 5 years each bringing the total period of protection for an industrial design in Barbados to fifteen (15) years.

F. PATENTS – PATENTS ACT 2001 AND PATENT REGULATIONS 1984

34. Where exclusions to patent rights are provided for, please describe in detail how these exclusions are applied in legal as well as practical terms.

Section 11 of the *Patents Act* provides that:

"(1) Whether or not they constitute an invention within the meaning of this Act, the following are not patentable under this Act, namely:

- (a) discoveries, scientific theories and mathematical methods;
 - (b) schemes, rules or methods for
 - (i) the carrying on of business;
 - (ii) the performing of acts of a mental nature only; or
 - (iii) the playing of games;
 - (c) methods for treatment of human beings or animals by surgery or therapy;
 - (d) diagnostic methods practised on human beings or animals;
 - (e) plant varieties, animal varieties and essentially biological processes for the production of plants other than microbiological processes and the products of those processes; or
 - (f) an invention, the commercial exploitation of which would be contrary to public order or morality or which is prejudicial to human or animal health or to plant life or the environment.
- (2) Paragraphs (c) and (d) of subsection (1) do not extend to products invented for use in the methods referred to in those paragraphs."

The exceptions contained in paragraphs (a) and (b) do not fall within the definition of patentable development as set out in Article 27.1 of the TRIPS Agreement. In practical terms, no application containing these elements is accepted by the Registrar as valid.

35. Please explain whether your legislation providing for the exclusion of inventions from patentability based on ordre public or morality has been applied in practice.

In practice, no patent applications have been refused in Barbados on the basis of ordre public or morality to date. It is likely that inventions relating to such methods as the cloning of human beings, the alteration of human genetic material or the cross-breeding of animal varieties would be refused on the basis of ordre public or morality.

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

Except as provided in section 11 quoted in the response to Q. 34, such processes would be protected.

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

Please refer to section 5 of the Patents Act, 2001-18, which explicitly enables the owner of an invention in respect of which a patent is granted under the Act to prevent any other person from exploiting the patented invention without the owner's consent. Section 5(2) describes the "acts of exploitation" which may be prevented by the owner of a patent granted under the Act. Section 52 of the Patents Act, 2001-18 set out the proceedings which may be instituted by the patent owner in case of infringement of his rights.

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

The Patents Act provides in section 4 that an invention is an idea that provides or enables a practical solution to a specific problem in technology and that an invention can be or relate to a product or a process. Except for unpatentable inventions which are excluded from patentability under section 11, a patent may be granted under section 7 of the Act for any invention which is novel, involves an inventive step and is industrially applicable. Barbados routinely grants patents protecting various pharmaceutical and agricultural chemical products and their related processes.

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

Such coverage will only apply in the event that the product itself satisfies the criteria for patentability as set out in section 7 of the Act. This will also depend on the manner in which the claims are presented. Each invention claimed in an application (whether for process or product) must meet the criteria for patentability as set out in section 7 of the Act.

40. 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 legislation and describe the additional conditions in detail.

Please see sections 17-21 of the Act. There are no other conditions for the grant of a patent.

41. Please explain in detail the conditions under which a compulsory licence may be granted in the interests of the development of an essential sector of the economy of Barbados (Section 49 (iv) of the Act).

These circumstances in which compulsory licences may be granted in Barbados are set out in section 49 of the Act. The section will operate whenever public policy dictates that circumstances affecting an essential sector of the Barbados economy have arisen which require the exploitation within Barbados of an invention protected by patent. The conditions will be determined as the need arises by the Minister responsible for administration of the Act. Due process is afforded to the owner of the patent or his licensee under section 49(2)(b) when the Minister intends to make an order under section 49(1) of the Act. In any event, the Minister is bound by the requirement in section 49(5) to take into account the economic value of the use of the patented invention and the need to correct anti-competitive practices in determining payment to the patent holder. To date the section has not been invoked.

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

Please note the provisions of section 49 in full, and section 49(5), 49(6) and 49(10) in particular. Barbados, being a common law country, uses a standard of reasonableness as determined by the Court, the Minister or an administrative body, on an objective basis, taking all relevant facts into considerations. In the event of a national emergency, e.g. a national health emergency, our Courts would be likely to regard as unreasonable attempts by the patent holder to "hold the Government over a barrel" by imposing non-commercial terms and conditions for the award of a contractual licence and attempting to engage in protracted negotiations in the face of the national emergency. In the absence of case law on this issue, it is impossible to say what period of time Courts might hold to be reasonable, all relevant facts will have to be examined on a case by case basis.

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

Please see section 29 for the duration of patent rights. There is no protection afforded after the expiry of the 20-year period.

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

The Act does not make provisions for such reversals of the burden of proof.

45. Please describe how your legislation provides for effective action against infringement of patent rights.

Please see sections 52 – 55 and section 62 of the Act.

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS – INTEGRATED CIRCUITS ACT 1998 AND INTEGRATED CIRCUITS (AMENDMENT) ACT 2001

46. 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.

Under the provision of section 6(2)(b), the Integrated Circuits Act, 1998-21 (as amended) expressly prohibits the importation, sale or distribution of the protected layout-design or integrated circuits that incorporate the layout design without the consent of the right holder.

47. 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.

Please see section 7(1) of the Act, which incorporates the wording of Article 37 of the TRIPS Agreement. In accordance with Article 37 of the TRIPS Agreement, the protection does not extend to

innocent acts of reproduction, importation, sale or distribution of an integrated circuit incorporating an unlawfully reproduced design.

48. Please explain in more detail the conditions applied in determining when a Government agency or third party may exploit a protected layout-design (Article 18 of the Act).

These conditions will be dependent of the circumstances affecting the public interest of Barbados at the time, and will be determined by the Minister responsible for administration of the Act, or the Court or an administrative body. In any event, the Minister is bound by the requirement in section 18(3) to take into account the economic value of the use of the patented invention and the need to correct anti-competitive practices in determining payment to the patent holder. The right holder is given the option of appealing such decisions for the exploitation of the design to a Judge in Chambers as provided in section 18(11).

H. PROTECTION OF UNDISCLOSED INFORMATION

49. 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.

The Protection Against Unfair Competition Act 1998-20 does not specify a time span for the protection of secret information.

50. Please explain how your legislation defines undisclosed information.

The Act speaks of "secret information". Please see section 8(2) for a full definition.

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

Please refer to section 4(2) of the Act which makes reference to "secret tests or other data".

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

Please refer generally to Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1).

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

Please refer to the Supreme Court of Judicature Act Cap 117A and the Rules of the Supreme Court, both of which were notified to the TRIPS Council. Under Barbados law, all administrative decisions are capable of being reviewed by or appealed to a judicial body. Provisions establishing a right of appeal to the Courts may be found under all intellectual property rights statutes. [See for example section 101(4) and 104 of the Barbados Copyright Act, 1998-4, section 47 of the Trade Marks Act, Cap. 319, section 19(2) of the Geographical Indications Act, 1998-22 and section 51 of the Patents Act, 2001-18.] Additionally, the Administrative Justice Act Cap 109B of the Laws of Barbados provides a general statutory remedy of judicial review which is available in respect of most administrative acts or omissions where an administrative body or other authority performs an administrative or quasi-judicial function which arises either under a statute or the Constitution.

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

Such relief lies within the inherent jurisdiction of Judges of the Supreme Court. In addition, please have regard to

- (a) Section 7 of the Geographical Indications Act 1998;
- (b) Section 44 of the Protection of New Plant Varieties Act 2001;
- (c) Section 16 of the Integrated Circuits Act 1998 as amended;
- (d) Section 52 of the Patents Act 2001;
- (e) Section 32 of the Copyright Act 1998;
- (f) Section 3 of the Protection Against Unfair Competition Act 1998;
- (g) Section 52 of the Trade Marks Act 1981 (as amended).

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

Please see the response to question 54. Also refer generally to Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1).

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

Please see the response to question 54. Also refer generally to Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1).

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

Please see the response to questions 11 and 22. Also refer generally to Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1).

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

Please see the response to question 26. Also refer generally to Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1).

V. RESPONSE TO A QUESTION POSED BY JAPAN

COPYRIGHT AND RELATED RIGHTS

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.

There are no such exceptions or exemptions under the provisions of the Barbados Copyright Act, 1998-4. The text of the Act was notified to the World Trade Organization for examination by member states.

VI. RESPONSES TO QUESTIONS POSED BY SWITZERLAND

A. TRADEMARKS

1. Please explain how your legislation implements Article 62.2 of the TRIPS Agreement. Please indicate how long it takes on average to register a trademark. Please cite the relevant provisions of your law.

Under the provisions of section 19 of the Trade Marks Act Cap. 319 of the Laws of Barbados, the grant and registration of the rights of the holder of the Mark are to be registered, once the requirements of the Act are satisfied. The relevant section reads:

"After all requirements of this Act governing the registration of a mark have been complied with in the case of an application, the applicant is entitled, on payment of the prescribed fee, to have the mark registered under this Act."

Provided that the application is in order in all respects, and there are no oppositions to the application, a trademark is registered, on average, approximately seven (7) months after the date of receipt of the application, inclusive of publication in the Official Gazette of the mark. Both the Trade Marks Act and the Trade Marks (Amendment) Act 2001, have been notified to the World Trade Organization.

B. PATENTS

2. Does your legislation grant patent protection for inventions relating to products and processes in all fields of technology? Are there any exceptions? If so, please explain what these exceptions are and how they comply with Article 27 of the TRIPS Agreement.

The Patents Act 2001 does not grant patent protection in all technological fields. For instance, the protection of plant varieties as contemplated in Article 27.3 is not considered under the Patents Act, but instead under the provisions of the Protection of New Plant Varieties Act 2001. Section 11 of the Patents Act provides that:

"(1) Whether or not they constitute an invention within the meaning of this Act, the following are not patentable under this Act, namely,

- (a) discoveries, scientific theories and mathematical methods;

- (b) schemes, rules or methods for
 - (i) the carrying on of business;
 - (ii) the performing of acts of a mental nature only; or
 - (iii) the playing of games.
 - (c) methods for treatment of human beings or animals by surgery or therapy;
 - (d) diagnostic methods practised on human beings or animals;
 - (e) plant varieties, animal varieties and essentially biological processes for the production of plants other than microbiological processes and the products of those processes; or
 - (f) an invention, the commercial exploitation of which would be contrary to public order or morality or which is prejudicial to human or animal health or to plant life or the environment.
- (2) Paragraphs (c) and (d) of subsection (1) do not extend to products invented for use in the methods referred to in those paragraphs."

The exceptions contained in paragraphs (a) and (b) do not fall within the definition of patentable development as set out in Article 27.1 of the TRIPS Agreement. Paragraphs (c) to (f) were drafted in accordance with the provisions of Article 27.3 of the TRIPS Agreement. The Patents Act 2001 has been notified to the World Trade Organization.

Follow-up question:

Please explain whether your legislation provides for other exceptions to patent protection besides the ones mentioned in your answer.

No, as perusal of the Act will confirm, section 11 is the only section in the Patents Act, 2001-18 which sets out the exceptions to patent protection in Barbados. New plant varieties are not patentable but are protected by sui generis legislation in the form of the Protection of New Plant Varieties Act, 2001-17.

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

No. Please refer to our answer to question 4.

Follow-up question:

In your answer you mention that importation is not considered as "working" a patent. Please indicate whether, in Barbados, a compulsory licence on the grounds of non-working can be issued even if the product is being imported. If this should be the case, please explain how this complies with the obligation of Article 27.1, providing that patent rights shall be enjoyable without discrimination as to whether products are being imported or locally produced.

It should be pointed out that the earlier response to question 3 merely answered the specific question posed by Switzerland regarding whether the Barbados Patents Act, 2001-18 expressly

addressed the issue as to whether importation of a patented product is "working" a patent for compulsory licensing purposes. Based on the terminology employed in our Act, importation of a patented product is not considered to be "working" a patent. Rather, it is included in the notion of "exploitation" of a patent.

By way of clarification, attention is drawn to the fact that the Barbados Patents Act, 2001-18 employs the wide term "exploitation" in sections 49 and 50. The concept "exploitation" is wide enough to encompass both the notion of the local "working" of the patented process as well as the "importation" of the patented product into Barbados. See for example section 50(1) of the Patents Act, 2001-18 which enables an interested person to apply to the High Court for the grant of a non-voluntary licence under a patent on the ground that the patented invention is not "exploited" or is "insufficiently exploited" by working the invention locally or by importation in Barbados.

In accordance with Article 31 of TRIPS, section 49 of the Patents Act, 2001-18 permits a non-voluntary licence to be issued in the public interest in the following two (2) situations, either (i) in cases where the invention is not being "exploited" in Barbados and such "exploitation" is in the opinion of the Minister necessary in the public interest and (ii) in cases where the manner of "exploitation" by the patent holder or his licensee has been determined by the High Court to be anti-competitive.

In these cases, the term "exploitation" covers both the notion of the local "working" of the patented process as well as the "importation" of the patented product into Barbados and consequently is in conformity with the obligation of Article 27.1, providing that patent rights shall be enjoyable without discrimination as to whether products are being imported or not.

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

The Patent Act 2001 makes provision in section 49 for the issuing of compulsory licences in accordance with Article 31 as follows:

"(1) Where:

- (a) the exploitation within Barbados of an invention protected by patent is, in the opinion of the Minister, necessary
 - (i) in the interests of national security;
 - (ii) in the interests of national health;
 - (iii) in the interests of national nutrition;
 - (iv) in the interests of the development of an essential sector of the economy of Barbados; or
 - (v) for other public interests;
- (b) the High Court has determined that the manner of exploitation by the owner of a patent or his licensee is anti-competitive,

the Minister may, without the consent of the owner of patent, but subject to the payment of a reasonable amount for the exploitation, authorize by order the

exploitation of the invention in Barbados by the Crown, by a government agency or by any person named in the order."

The section goes on to set out in exact detail the process by which such authorization will be made, and these provisions are similar to the provisions of Article 31 in terms of the payment of the "reasonable amount" the minister is to take into account the economic value of the patent and the need to correct anti-competitive practices.

As a safeguard to the owner's interests, any request to the Minister for a grant of a compulsory licence must be accompanied by evidence that a request for a contractual licence was made to the owner, but the requesting party is unable to obtain the licence on reasonable commercial terms and in a reasonable time. The jurisdiction for the review of the grant of the licence is vested in the High Court. All other provisions are in accordance with Article 31 in full. This Act has been notified to the World Trade Organization.

5. Does your legislation provide for the principle of the reversal of burden of proof in a process patent litigation? Please cite the relevant provisions of law.

There is no reversal of the burden of proof before the High Court under these circumstances.

Follow-up question:

In your answer you mention that your legislation does not provide for the possibility of the judicial authority to order the reversal of the burden of proof in a process patent litigation. Please explain how this complies with the obligation of Article 34 of the TRIPS Agreement.

It is our understanding that Article 34.1 of the TRIPS Agreement specifies cases in which contrary to normal evidentiary rules, the judicial authorities may require the alleged infringer to show that he did not infringe the process patent. Although the Patents Act does not appear to address the reversal of the burden of proof explicitly, please see section 60 of the Patents Act, 2001-18 for further assistance regarding the powers of the High Court in infringement proceedings.

C. PROTECTION OF UNDISCLOSED INFORMATION

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

Section 4(1)(b)(ii) of the Protection Against Unfair Competition Act 1998 makes explicit provision for the definition of acts of this nature as "unfair competition". The relevant section reads:

"The following acts are acts of unfair competition:

- (b) any act or other conduct that consists of or results in an unfair commercial use:
 - (i) by a competent authority, or

- (ii) by other persons as a result of the improper disclosure by a competent authority,

of secret tests or other data concerning pharmaceutical or agricultural chemical products that utilise new chemical entities the origination of which requires considerable effort and which data have been submitted to the competent authority for the purpose of obtaining approval for the marketing of such products."

The Act does not make any exceptions to this rule, nor does the Act contain any specified duration of protection for undisclosed test or other data.

Follow-up question:

Referring to the issue of unfair commercial use of data submitted by an applicant to the responsible State Agency in the procedure for market authorization of a pharmaceutical or of an agricultural chemical product, please specify whether the responsible State Agency will require the same amount of data from a second applicant requesting market authorization for a similar or identical product as from the first applicant.

The Barbados Protection Against Unfair Competition Act, 1998-20 does not address this situation specifically. However, on the principle of equality before the law, it is standard administrative practice in Barbados for common standards to be applied to the processing of applications and each successive applicant would be required to produce to the responsible State Agency the same amount of data or information as was required from the prior applicant. In other words, each application will be treated on an equal basis, and successive applicants would be required to produce the same amount of data as was required from the first applicant.

D. ENFORCEMENT

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

Please see our responses to the Checklist of Issues on Enforcement⁴ for answers in relation to the Trade Marks Act and the Copyright Act respectively.

In terms of the Protection Against Unfair Competition Act, section 4(3) provides that:

"Any officer of the competent authority who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$10,000.00 or to imprisonment for a term of 2 years or to both such fine and imprisonment."

Civil remedies are dealt with in detail in the responses to the Checklist of Issues on Enforcement.⁵

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

In the past year, the Government of Barbados has undertaken several training programmes to sensitise its enforcement personnel on matters concerning the enforcement of intellectual property

⁴ Document IP/N/6/BRB/1.

⁵ Document IP/N/6/BRB/1.

laws. In particular, assistance from the World Intellectual Property Organization (WIPO), the World Customs Organization (WCO) and the Business Software Alliance (BSA), has made it possible for local officials to receive training in product identification, evidence gathering, drafting of criminal charges, search and seizure techniques, and future trends in intellectual property law and enforcement.

This training has enabled the Customs Department and the Royal Barbados Police Force to detect, investigate, and prosecute several cases relating to infringement of intellectual property rights. In addition, a programme of public education has made the populace of Barbados more aware of the need to respect and protect these rights, as well as knowledge of basic notions of intellectual property that is intended to allow the ordinary citizen to be able to inform the police and customs officials of the existence of infringing articles within the community.

Future programmes include the intensive training of local enforcement officers by way of study visits to other forces and departments, along with the development of closer ties with non-governmental organizations and Government departments in other countries with more experience of detection and prevention of organised infringement and piracy. The public education will be continued indefinitely, in order to further enlighten the population about intellectual property.

VII. RESPONSES TO QUESTIONS RECEIVED FROM 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.

The various intellectual property statutes of Barbados apply to the nationals of WTO Member states in the same manner as they apply to Barbadians.

(a)	Copyright Act, 1998	Section 8 and 142
(b)	Patents Act, 2001-18	Section 21
(c)	Protection of New Plant Varieties Act, 2001	Section 12
(d)	Trade Marks Act, Cap. 319	Section 12
(e)	Industrial Designs Act, Cap. 309A	Section 16
(f)	Integrated Circuits Act, 1998-21	Section 9

B. COPYRIGHT AND RELATED RIGHTS

2. Please explain whether and how the copyright law of Barbados 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.

Such compliance is derived from the fact that the Copyright Act 1998 was drafted using the terms of the TRIPS Agreement and the Berne Convention for guidance. Barbados also complies with Article 6bis in its recognition of moral rights of an author in sections 14 and 15 of the Act.

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

Section 6(1) of the Act recognises Copyright as subsisting in original literary works. Section 2 of the Act defines "literary work" as inclusive of "a computer programme". This is further defined as:

"...a set of instructions, whether expressed in words or as a 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."

4. Article 11 of the TRIPS Agreement requires that rental rights for computer programs and cinematographic works be available. Please cite to the corresponding provision of the copyright law of Barbados.

Please refer to section 76 of the Act.

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

Please note the following general provisions:

- (a) Literary works – life of the author plus 50 years (section 10);
- (b) Sound recordings and film – 50 calendar years following the year in which the work was first being made available to the public (section 11);
- (c) Broadcasts and cable programmes – 50 calendar years following the calendar year of first broadcast (section 12);
- (d) Typographical arrangement of published edition – 25 calendar years following the calendar year of first publication of the edition (section 13).

6. Please describe the protection the copyright law of Barbados provides for performers, and the term of the protection.

Please see Part VIII of the Copyright Act. The duration of copyright in performance is for 50 calendar years from the end of the year in which the performance took place (section 127).

7. Article 14.2 of the TRIPS Agreement provides that producers of phonograms are to enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Article 14.2 requires that producers of phonograms are to have the right to authorize or prohibit the commercial rental to the public of originals or copies of their phonograms. Please describe how the copyright law of Barbados implements these obligations and indicate the term of protection.

In respect of ownership of rights generally, please see Parts I, II and III of the Act. Please refer to section 76 in relation to the rental rights.

C. TRADEMARKS

8. Please describe the subject matter that can comprise a trademark under the trademark law of Barbados.

Under the provisions of the Trade Marks Act (as amended), section 4(1)-(3) contains the general definitions used therein. Section 4(4) states that marks can:

"...consist of arbitrary or fanciful designations, names, pseudonyms, geographical names, slogans, devices, reliefs, letters, numbers, labels, envelopes, emblems, prints, stamps, seals, vignettes, borders and edgings, combinations or arrangements of colours and shapes of goods or containers."

The above definition is subject to objections which may be taken to the registration of the mark on relative or absolute grounds, including the potential of a mark to mislead, deceive or be confused with a previously registered mark or a well-known mark, well-known names, and marks containing a geographical indication of such a nature as would mislead the public as to the true place of origin of the goods. [Please refer to sections 8 and 9 of the Trade Marks Act, 1981(as amended by the Trade Marks (Amendment)Act 2001-16) and section 20 of the Geographical Indications Act, Cap. 1998-22.]

9. Please describe the procedure that must be followed to register a trademark in Barbados, citing the relevant provisions of the law, and describe the rights that the owner of a registered mark can exercise.

Sections 10 to 22 of the Trade Marks Act 1981 (as amended by the Trade Marks (Amendment) Act 2001 sets out the procedure to be followed in the application process. These provisions are further amplified and clarified by regulations 19-38 of the Trade Marks Regulations, 1984. These pieces of legislation have been notified to the TRIPS Council. The rights of a registered trademark owner are set out specifically in section 5 and 6 of the Trade Marks Act 1981.

10. Please provide the length and terms of protection that the trademark law of Barbados provides for a trademark.

Under section 25 of the Trade Marks Act 1981, the registration of a mark remains valid for 10 years from the date of registration; but the registration may be renewed indefinitely for further consecutive periods of 10 years upon payment of the relevant fee on each renewal.

D. GEOGRAPHICAL INDICATIONS

11. Please describe in detail how the laws of Barbados provide for the recognition and protection of geographical indications required by Article 22.2 of the TRIPS Agreement, citing to the relevant provisions of law or regulation, and provide examples of geographical indications so protected.

The Geographical Indications Act 1998-22 and its implementing regulations Geographical Indications Regulations, 2001 provide for the recognition and protection of geographical indications. Geographical designs are protected irrespective of registration. This Act has been notified to the TRIPS Council. No applications have been received by the Registrar under the Act, accordingly examples cannot be provided at this time.

12. Please describe in detail the manner in which the higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement is implemented, citing to the relevant provisions of law or regulation, and provide examples of geographical indications for such products.

Section 4 of the Act provides specific protection for homonymous geographical indications for wines. At this time, no applications under the Act have been received by the Registrar, accordingly examples cannot be provided.

E. INDUSTRIAL DESIGNS

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

Please note the provisions of sections 12-23 of the Industrial Designs Act, Cap. 309A of the Laws of Barbados which describe the procedure for applying for and registering an industrial design. The Act must be read in conjunction with its implementing regulations, the Industrial Designs Regulations, 1984 setting out the applicable fees and the forms to be used in connection with the application.

The protection derived from a grant of industrial design are set out in section 5(1) of the Act, viz.:

"The registration of an industrial design vests in the registered owner of the design the exclusive right to prevent other persons from performing any of the following acts:

- (a) reproducing the industrial design in the manufacturing of a product;
- (b) importing, offering for sale, or exposing for sale, or selling, a product in or by which the industrial design is reproduced; or
- (c) stocking any product described in paragraph (a) or (b) for the purpose of sale."

14. Please describe the procedure that must be followed to obtain protection for textile designs and cite to the relevant provisions of law or regulation.

There are no specific provisions relating to textile designs. Protection for such designs will be obtained in the same manner as for other all industrial designs. See the response to question 14 above.

F. PATENTS

15. Please describe in detail the way in which the patent law of Barbados implements Article 27 of the TRIPS Agreement, indicating any exceptions provided for, and including details regarding the protection for micro-organisms and non-biological and microbiological processes and plant varieties. Please cite to the relevant provisions of the law.

Section 11 of the Patents Act provides that

- "(1) Whether or not they constitute an invention within the meaning of this Act, the following are not patentable under this Act, namely,

- (a) discoveries, scientific theories and mathematical methods;
 - (b) schemes, rules or methods for:
 - (i) the carrying on of business;
 - (ii) the performing of acts of a mental nature only; or
 - (iii) the playing of games;
 - (c) methods for treatment of human beings or animals by surgery or therapy;
 - (d) diagnostic methods practised on human beings or animals;
 - (e) plant varieties, animal varieties and essentially biological processes for the production of plants other than microbiological processes and the products of those processes; or
 - (f) an invention, the commercial exploitation of which would be contrary to public order or morality or which is prejudicial to human or animal health or to plant life or the environment.
- (2) Paragraphs (c) and (d) of subsection (1) do not extend to products invented for use in the methods referred to in those paragraphs."

The exceptions contained in paragraphs (a) and (b) do not fall within the definition of patentable development as set out in Article 27.1 of the TRIPS Agreement. In practical terms, no application containing these elements is accepted by the Registrar as valid. Plant varieties are dealt with in the Protection of New Plant Varieties Act 2001, which has been notified to the TRIPS Council. Inventions not falling within the above cited exceptions, and satisfying the criteria of novelty, inventive step, and industrial applicability as provided in section 7 of the Act, are patentable and thus satisfy Article 27 of the TRIPS Agreement.

16. Please describe in detail the rights provided patent holders under the patent law of Barbados and cite to the relevant provisions of law.

The rights of patent holders are set out in sections 5 and 6 of the Patents Act, 2001-18.

17. Please describe in detail any provisions in the laws of Barbados permitting unauthorized use of a patent, citing to the relevant provisions of law, and describe in detail the conditions under which such use can occur.

The Patents Act makes provision for the compulsory licensing of patents in highly specific instances. These instances are to be found in section 49. These conditions will be dependent of the circumstances affecting the interests of national security, national health, national nutrition, development of an essential sector of the economy of Barbados, or other public interests; these circumstances will be determined by the Minister responsible for administration of the Act. Due process is afforded to the owner of the patent or his licensee under section 49(2)(b) when the Minister intends to make an order under section 49(1) of the Act. In any event, the Minister is bound by the requirement in section 49(5) to take into account the economic value of the use of the patented invention and the need to correct anti-competitive practices in determining payment to the patent holder. To date the section has not been invoked.

18. What term of protection does the patent law of Barbados provide for patents? Please describe any provisions for extension of the term of protection and cite to the relevant provisions of the law.

Section 29 provides that the duration of patent rights is for a 20 year period. There is no protection afforded after the expiry of the 20 year period.

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

19. Please describe in detail the protection for layout-designs of integrated circuits provided under the laws of Barbados, including the term of protection, and cite to the relevant provisions of law.

Section 6(2)(b) of the Integrated Circuits Act, 1998-21 expressly prohibits the importation, sale or distribution of the protected layout-design or integrated circuits that incorporate the layout design without the consent of the right holder. Section 8 of the Act provides that the duration of protection is for a ten year period from the first exploitation of the design anywhere in the world, or from the date of the filing of the application in the event that the design had never been previously exploited. As with the other industrial property statutes, the Act must be read in conjunction with its implementing regulations, the Integrated Circuits Regulations, 2001. Both the Act and its regulations have been notified to the TRIPS Council.

H. PROTECTION OF UNDISCLOSED INFORMATION

20. Please describe in detail how the laws of Barbados provide for the protection of undisclosed information as required by Article 39.2 of the TRIPS Agreement and provide citations to the relevant provisions of law.

The Protection Against Unfair Competition Act 1998-20 employs the concept of "secret information" rather than undisclosed information. The Act defines acts of unfair competition in section 4, and also defines "secret information" in section 8(2). The Act has been notified to the TRIPS Council.

21. Please describe in detail the manner in which protection is provided test data regarding pharmaceutical and agricultural chemical products submitted to the government in order to obtain marketing approval in Barbados and cite to the relevant provisions of law.

Please note the response to question 20. In addition, the Act (at section 4(2)) specifically prohibits such disclosure except where such disclosure is necessary to protect the public and steps are taken to protect the tests and data against unfair commercial use. The penalty for unauthorised disclosure is a fine or term of imprisonment, without prejudice to further civil actions.

22. 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 given the earlier applicant before such reliance becomes possible.

This scenario has not arisen in practice, however, it is considered that if the information or data relied upon is in the public domain and no longer qualifies as "secret information", the prohibition against the use of such information including subsequent applicants would not apply. The Protection Against Unfair Competition Act, 1998-20 does not specify a specific time span for the protection of secret information.

I. ENFORCEMENT

23. Please describe in detail the manner in which the laws of Barbados provide for effective action against infringement of intellectual property rights as required by Article 41.1 of the TRIPS Agreement.

Please refer generally to Barbados's responses to the Checklist of Issues on Enforcement. (document IP/N/6/BRB/1).

24. Article 43.1 of the TRIPS Agreement requires that judges be authorized 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 describe how the laws or regulations of Barbados provide this authorization, citing to the relevant provisions of law or regulation.

Please refer to the Supreme Court of Judicature Act Cap. 117 and the Rules of the Supreme Court, both of which were notified to the TRIPS Council. Under the Rules of Court, in the absence of mutual discovery and inspection of documents, a party may obtain an interlocutory order requiring the opposing party to make discovery of documents (including particular documents) which are or have been in the possession, custody or power of that party. The Court may also order inspection and production for inspection and order discovery by interrogatories. [See generally Orders 24-27 of the Barbados Supreme Court of Judicature Rules, issued under the Supreme Court of Judicature Act Cap 117 notified to the TRIPS Council in 2001.] Please also refer to Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1).

25. Please describe in detail the all of the civil remedies that are available to right holders under the laws of Barbados, citing to the relevant provisions of law or regulation.

Please refer to Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1) which describes in much detail the civil and administrative remedies available to rights holders under the applicable intellectual property rights statutes and the relevant other laws.

In particular, attention may also be had to the following:

- (a) Section 7 of the Geographical Indications Act, 1998-22;
- (b) Sections 42-47 of the Protection of New Plant Varieties Act, 2001-17;
- (c) Section 16 of the Integrated Circuits Act, 1998-21 as amended;
- (d) Section 56 of the Patents Act, 2001;
- (e) Section 32 of the Copyright Act, 1998;
- (f) Section 3 of the Protection Against Unfair Competition Act, 1998;
- (g) Sections 38-47 of the Trade Marks Act, 1981 (as amended).

26. Please describe in detail the provisional procedures and remedies available to right holders under the laws of Barbados, citing to the relevant provisions of law and regulation, and indicate any condition under which a right holder may avail itself of those procedures and remedies.

Please refer to Barbados's responses to questions 5, 10, 11 and 12 of the Checklist of Issues on Enforcement (document IP/N/6/BRB/1) which describe in much detail the provisional procedures and remedies available to rights holders under the applicable intellectual property rights statutes and the relevant other laws.

In particular, attention may also be had to the following:

- (a) Section 7(2) of the Geographical Indications Act, 1998-22;
- (b) Section 45 of the Protection of New Plant Varieties Act, 2001-17;
- (c) Section 16(2)(a) of the Integrated Circuits Act, 1998-21 as amended;
- (d) Section 52 of the Patents Act, 2001;
- (e) Section 32 of the Copyright Act, 1998;
- (f) Section 3 of the Protection Against Unfair Competition Act, 1998;
- (g) Sections 38-40 of the Trade Marks Act, 1981 (as amended).

J. SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

27. Please describe in detail the procedures under the laws of Barbados that provide for border enforcement at least for trademark counterfeiting and copyright piracy, identifying the competent authority and citing to the relevant provisions of law or regulation.

Please refer to the Copyright Act, section 49, and the Trade Marks (Amendment) Act, 2001-16, sections 53A – 53M (as contained in section 14 therein) for detailed procedural requirements for the exercise of this enforcement mechanism. For the purposes of both Acts, the Comptroller of Customs is the competent authority.

28. Please indicate if border enforcement is available to owners of other forms of intellectual property and, if so, please describe the procedures and remedies available in relation to each form of intellectual property, citing the relevant provisions of law.

The procedures implement Article 51 of the TRIPS Agreement and accordingly only relate to trademark counterfeiting and copyright piracy. The border enforcement measures are therefore not specifically extended to other intellectual property.

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

The Comptroller is not empowered to act *ex officio*.

K. CRIMINAL PROCEDURES

30. Please describe in detail how the laws of Barbados implement Article 61 of the TRIPS Agreement that requires Members to 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 cite to the relevant provisions of law and regulation.

Please refer generally to Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1) for a description of the remedies available. See also sections 50A-50E of the Trade Marks (Amendment) Act, 2001-16 for the criminal procedures and remedies to be applied in cases of wilful trademark counterfeiting. See also sections 132-134 of the Copyright Act, 1998-4.

31. 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 describe the provisions in the laws of Barbados that provide for such remedies, and describe the circumstances in which those remedies would be imposed, citing to the relevant provisions of law or regulation.

Please refer to our response to question 30. Also please refer generally to Barbados's responses to the Checklist of Issues on Enforcement (document IP/N/6/BRB/1). See also sections 49A-49E of the Trade Marks (Amendment) Act, 2001-16.

32. 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 Barbados that provide for such procedures and remedies, citing to the relevant provisions of law or regulation.

Please have regard to the following:

- (a) The Industrial Designs Act, Cap 309A, section 44;
- (b) The Protection of New Plant Varieties Act 2001, section 48;
- (c) Integrated Circuits Act, 1998-21, Section 17;
- (d) The Patents Act, 2001-18, section 62; and
- (e) The Geographical Indications Act, 1998-22, section 6(2).

L. STATISTICAL QUESTIONS

33. Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design, and trade secret enforcement for 2000, including the number of cases filed; injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.

The Barbados Copyright Society of Composers, Authors and Publishers (COSCAP) which manages the copyright repertoire of a number of local and regional artistes, brought three civil actions for copyright infringement in the year 2000. Another local copyright holder Madd Productions instituted legal proceedings against an infringer. Madd obtained an injunction in their case. The substantive proceedings in all four of these matters are still sub judice.

34. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for 2000, including the number of raids, prosecutions, convictions, and the amount of fines and/or jail terms (including whether the fines were paid and whether the jail term was actually served or was suspended) and any other information establishing that the criminal system operates effectively to deter copyright piracy and trademark counterfeiting.

In 2000, the Microsoft Corporation, acting through the Business Software Alliance (BSA), initiated police action against an infringer of computer software who was selling pirated copies commercially resulting in one raid and confiscations.
