WORLD TRADE ORGANIZATION

WT/TC/NOTIF/TRIPS/1
15 October 1996

(96-4347)

Original: English

TECHNICAL COOPERATION HANDBOOK ON NOTIFICATION REQUIREMENTS

Agreement on Trade-Related Aspects of Intellectual Property Rights

1. This section of the Handbook on Notification Requirements covers the notification obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It consists of the following six parts:

Part I: Overview of notification requirements

Part II: Listing of the notification obligations

Part III: Document(s) concerning guidelines and formats

Part IV: "Mock" examples of notifications

Part V: Text of the TRIPS Agreement

Part VI: Text of the Agreement between WIPO and the WTO

2. For acceding countries, the deadlines for the submission of their notifications will be governed by their respective Protocols of Accession.

Note: The Handbook on Notification Requirements does not constitute a legal interpretation of the notification obligations under the respective Agreement(s). It has been prepared by the Secretariat to assist Members in complying with their notification

obligations.

TRIPS-I

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

OVERVIEW OF NOTIFICATION REQUIREMENTS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

I. Members' obligations under the TRIPS Agreement

1. The TRIPS Agreement obliges WTO Members to protect all the main categories of intellectual property. The provision of intellectual property rights in national law has to correspond at least to the standards of protection specified in the Agreement. Moreover, the Agreement contains detailed commitments to provide procedures and remedies in national law so as to ensure that intellectual property rights can be effectively enforced.

II. Transitional periods

2. All Members will eventually have the same obligations to protect intellectual property rights, but different transitional arrangements apply for developed countries, developing countries, certain countries in transition to market economies and least-developed countries.

3. According to Articles 65 and 66 of the Agreement, the general transitional periods for these Members are 1, 5, 5 and 11 years respectively (calculated from the date of entry into force of the WTO Agreement, i.e. 1 January 1995). Countries in transition to market economies are only permitted to avail themselves of a period of 5 years on the basis of the conditions specified in Article 65.3. The transitional period for least-developed countries is extendable by the TRIPS Council if good reasons are shown.

4. A special transitional period applies for developing countries in the area of patents if the conditions of Article 65.4 are met and subject to the provisions of Article 70.8 and 70.9.

5. For all Members a transitional period of only 1 year applies in respect of the obligations to provide national and m.f.n. treatment in accordance with Articles 3, 4 and 5 of the Agreement.

6. Moreover, during a period of transition, no Member is allowed to diminish the level of protection for intellectual property existing in its territory in such a way as to reduce the degree of consistency with the (Article 65.5).

7. No notification is required in order to invoke any of the transitional periods.

8. The date of application of TRIPS provisions in acceding countries is governed by their respective protocols of accession.

9. It should also be noted that the transitional periods under the Agreement are optional and that provisions of the Agreement can be implemented in advance of the obligation under the Agreement to do so.

III. **Provisions of the TRIPS Agreement laying down notification requirements:**

(a) ***Article 63.2***

Notification of laws and regulations.

(b) ***Articles 1.3 and 3.1***

Notification of certain options in regard to :

- the definition of beneficiary persons (Art. 1.3);
- national treatment (Art. 3.1).

(c) ***Article 4(d)***

Notification of international agreements to justify certain m.f.n. exemptions.

(d) ***Article 69***

Notification of contact points.

(e) *Other notification requirements*

(i) Pursuant to the obligations under Article 2 of the TRIPS Agreement stemming from the provisions of ***Article 6ter of the Paris Convention for the Protection of Industrial Property, Stockholm Act (1967)*** *("Paris Convention")*;

(ii) Pursuant to the obligations under notification provisions of intellectual property conventions incorporated by reference into the TRIPS Agreement but not explicitly referred to in it, notably those stemming from the Berne Convention for the Protection of Literary and Artistic Works ("*Berne Convention*") or the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations ("*Rome Convention*"):

- ***Article 14bis(2)(c) of the Berne Convention***
- ***Article 14bis(3) of the Berne Convention***
- ***Article 15(4) of the Berne Convention***
- ***Article I of the Appendix to the Berne Convention***
- ***Article II(3)(b) of the Appendix to the Berne Convention***
- ***Article IV(2) of the Appendix to the Berne Convention***
- ***Article IV(4)(c)(iv) of the Appendix to the Berne Convention***
- ***Article V of the Appendix to the Berne Convention***
- ***Article 17 of the Rome Convention***
- ***Article 18 of the Rome Convention***

(iii) As agreed by the TRIPS Council ***in relation to Article 67*** of the Agreement on technical cooperation

ARTICLE 63.2

10. The TRIPS Council has adopted procedures for the notification of laws and regulations pertaining to the subject matter of the TRIPS Agreement under Article 63.2 (documents IP/C/2, 3, 4 and 5). The basic procedures are contained in document IP/C/2. The Agreement Between WIPO and the WTO is also relevant with regard to these procedures (see Part VI of this Handbook).

Initial Notifications

What are Members required to notify?

11. The answer to this question can be found in Article 63.2 of the TRIPS Agreement, which in conjunction with Article 63.1 lays down that *Members shall notify the laws and regulations made effective pertaining to the subject matter of the Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights)*[1].

12. According to the procedures referred to in paragraph 10 above, notifications of laws and regulations need to comprise the following elements:

- the texts of all relevant laws and regulations in their *original language*;
- *translations* into one WTO language of main dedicated laws and regulations, if the original language is not a WTO language (see further paragraph 13(b) below);
- a *listing* of "other laws and regulations" in accordance with a specific format (see further paragraph 13(d) below);
- responses to a *checklist* of questions on law and practice in the area of enforcement, in addition to the notification of the texts of enforcement laws and regulations (see further paragraph 13 (d) and (e) below)[2].

Modalities

13. The procedures for notification of laws and regulations under Article 63.2 reflect a number of departures from normal GATT/WTO practice regarding submission, translation and distribution of notifications. It was recognised that the volume of these notifications would be very large and procedures were adopted to attempt to reduce the burdens for Members in preparing them as well as for the Secretariat in processing them. At the same time, they nevertheless attempt to ensure that the purpose of the notification system as an instrument to monitor implementation would not be unduly impaired and could remain effective.

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[1] These notifications are being distributed in the IP/N/1/- series of documents. Texts of main dedicated intellectual property laws and regulations are being distributed in special law series of documents (see document IP/C/W/20).

[2] Responses to this Checklist are being distributed in the IP/N/6/- series of documents

(a) Not all laws and regulations need to be notified in a WTO language. Distinction has been made between so-called "*main dedicated intellectual property laws and regulations*" and "*other laws and regulations*". Document IP/C/2, paragraphs 6 and 9 an document IP/C/W/8 contain some guidelines for Members in order to help them make their assessment when dividing their laws and regulations into these two categories. Main laws and regulations have to be notified in English, French or Spanish; other laws and regulations can be notified in a Member's national language. Translations of laws and regulations must be accompanied by the authentic texts of the laws and regulations in question in a national language.

(b) Under Article 2(5) of the Agreement Between WIPO and the WTO, the assistance of WIPO will be available to developing country Members for translation of laws and regulations for the purposes of Article 63.2 of the TRIPS Agreement, whether or not they are Members of WIPO.

(c) Only the texts of **main laws and regulations** will be distributed in WTO documents and only in the WTO language in which they have been submitted.

(d) **Other laws and regulations** will not be distributed but only be available for consultation in the WTO Secretariat. However, in order to maximise transparency as to the contents of other laws and regulations, the following specific procedures have been adopted:

- The notification of the texts of all "other laws and regulations" must be accompanied by a listing of them according to the format contained in document IP/C/4. This listing must be submitted at the same time as the laws and regulations themselves. A model of such a listing can be found in document IP/C/W/8. According to the two-column format, the title of the laws and regulations will be presented on the left side and a brief description of them in English, French or Spanish on the right side.

- It should be noted that, unless an enforcement law is notified as a main law, enforcement laws must be taken up in this listing, including their brief description. In addition, the requirements referred to in subparagraph (e) below apply.

(e) It has been recognised that adequate transparency of the contents of **enforcement laws**, in particular as to how TRIPS obligations have been implemented, may not necessarily be achieved by the notification of laws and regulations according to the above mentioned procedures. For example, in countries with a common law tradition, this area of law is often not codified but governed by case law. Therefore, the TRIPS Council has adopted a checklist of issues on enforcement (document IP/C/5), responses to which Members have to submit in addition to any texts of laws and regulations including any brief description in the format referred to in the previous indent. The responses to this checklist have to be submitted by each Member as soon as possible after the date on which it starts applying the implementing legislation in question.

When are Members required to notify?

14. This question is answered by paragraph 2.1 of the Decision of the TRIPS Council reflected in document IP/C/2: "*As of the time that a Member is obliged to start applying a provision of the TRIPS Agreement*, the corresponding laws and regulations shall be notified without delay

(normally within 30 days, except where otherwise provided by the TRIPS Council)".

15. The time that a Member is required to notify legislation depends, therefore, on the moment that the Member is obliged to implement the corresponding provision(s) of the TRIPS Agreement. This moment is, in respect of some obligations under the Agreement, the same for all Members. In respect of many obligations, however, the moment differs from Member to Member, depending on whether the Member in question is a developed, developing, transition economy, least-developed or acceding country (*see Section II above*).

Provisions applicable to any Member as of 1 January 1995

(i) Article 70.8 and 70.9

Each Member with a patent law which does not cover inventions of pharmaceutical and/or agricultural chemical products as patentable subject matter in accordance with Article 27 of the Agreement is permitted to delay the introduction of patentability of such inventions by product patents in accordance with the transitional periods referred to in Section II above. However, any such Member is obliged to provide, during such a transitional period, for the possibility of filing patent applications concerning such inventions already as of the date of entry into force of the WTO Agreement (Article 70.8). If certain conditions are met, as specified in Article 70.9, exclusive marketing rights have to be made available to applicants under Article 70.8 in respect of pharmaceuticals or agricultural chemicals covered by their applications.

Any Member obliged to give effect to the provisions of Article 70.8 and 70.9 has to notify the corresponding legislation under Article 63.2 promptly after the date of entry into force of the WTO Agreement, being the date as of which application of these provisions is obligated for the countries concerned (in accordance with paragraph 2.1 of document IP/C/2 mentioned above in paragraph 14).

Members that provide product patent protection for pharmaceuticals and agricultural chemical products commensurate with the requirements of Article 27 are not concerned by these obligations.

(ii) Article 65.5

Notification of amendments of intellectual property laws or regulations during the transitional period of possible relevance to Article 65.5 was discussed in the TRIPS Council, but procedures for such notifications were not agreed.

Obligations applying to all Members as of 1 January 1996

Articles 3, 4 and 5

One year as of the date of entry into force of the WTO Agreement, all Members are obliged to comply with the national treatment and m.f.n. provisions of Articles 3, 4 and 5 of the Agreement and, consequently, to notify the corresponding implementing legislation.

For Members which are required to comply with all obligations under the Agreement as of 1 January 1996, this notification requirement overlaps with their obligation to notify all TRIPS implementing legislation as of that date.

The situation is different for Members which are entitled to a transitional period with respect to other obligations which extends beyond 1 January 1996 (*see Section II above*). These Members are only required, as of 1 January 1996, to notify such provisions of their intellectual property laws and regulations as are specifically relevant in relation to Articles 3, 4 and 5.

The TRIPS Council has considered these notification requirements in informal consultations and agreed that the Members concerned had a range of options as to how to meet these notification requirements in a way best suited to their national circumstances. Three options were identified in particular:

- notifying the specific provisions of laws and regulations that implement the obligations set out in Articles 3, 4 and 5;

- notifying all intellectual property laws and regulations; or

- making a general statement that nationals of other WTO Members enjoy non-discriminatory, together with a list of any exceptions to that principle.

The Council has requested the Secretariat to prepare a paper, for consideration by Members in November 1996, which would recognize these three options and contain a draft format for the last option.

Obligations applying to developed country Members as of 1 January 1996

Members to which none of the options for a longer transitional period under Article 65, paragraphs 2, 3 and 4 is available are required to comply, as of 1 January 1996, with all substantive obligations under the Agreement and, consequently, to notify the corresponding implementing legislation. The same applies to those Members which are not using, or no longer using, the transitional period to which they may be entitled.

The modalities of this notification requirement, which in due course may also form the basis for the notification of implementing legislation by other Members, including developing country Members, have been discussed above.

As to the timing of the required submission of the laws and regulations in question, reference is made to documents IP/C/3 and WTO/AIR/240.

How should Members notify?

15. In accordance with the Decision of the TRIPS Council reflected in document IP/C/2, the full texts of the relevant legislation must be made available to the TRIPS Council (*for the modalities concerning form, translation and distribution, see paragraph 13 above*). For any given legal text, two options are available:

1. Submission of the text of the law or regulation in question directly to the WTO Secretariat[3].

[3] The WTO Secretariat will send a copy to WIPO of all laws and regulations of which it receives the full text. The WIPO Governing Bodies have agreed that receipt of such texts will suffice as communications of laws and regulations under, in particular, the Paris Convention or the Berne Convention.

2. Communication of a statement that the full text of the law or regulation in question can be found in the WIPO collection of laws[4]. Such a statement should be accompanied by a list specifying the laws and regulations in question, so as to allow the WTO Secretariat to request WIPO to send copies for distribution to the TRIPS Council.

Notification of Amendments

16. In case of *amendments* to laws and regulations pertaining to the subject matter of the TRIPS Agreement introduced after the initial notification of these laws or regulations under Article 63.2, or in case of other changes in a country's legislation, document IP/C/2, paragraph 2 lays down that a notification must be made to the TRIPS Council without delay after entry into force of the amendment (normally within 30 days where no translation is required and within 60 days where translation is necessary).

Advance Notifications

17. In case a Member brings a law or regulation into conformity with provisions of the TRIPS Agreement *in advance of* its obligation under the TRIPS Agreement to start applying those provisions, that Member will use its best endeavours to notify such law or regulation as soon as possible after its entry into force (see document IP/C/2, paragraph 3).

ARTICLES 1.3 and 3.1

What should be notified?

18. Article 1.3 of the Agreement defines the persons that must be eligible for the protection to be made available by Members under the Agreement. The Article does so by referring to the criteria for eligibility as laid down in the Paris Convention, the Berne Convention, the Rome Convention and the Washington Treaty for the relevant areas of intellectual property. Thus, the same criteria have to be applied among WTO Members as well, whether or not they are member States to any of the Conventions or Treaty themselves. Certain of the exceptions allowed under these criteria, notably those of the Berne Convention or the Rome Convention, are allowed *on condition that they are notified to the TRIPS Council*, whether or not they have been notified to the Secretary General of the United Nations under the Berne Convention or the Rome Convention themselves.

19. Article 3.1 of the Agreement requires national treatment to be given to persons eligible for protection under Article 1.3, subject to the exceptions allowed under the Conventions and Treaty mentioned above. Equally as under Article 1.3, certain of these exceptions under Article 3.1 are allowed on condition that they are notified to the TRIPS Council.

20. (For further details concerning these notification requirements, reference is made to the background note prepared by the Secretariat circulated in document IP/C/W/5.)

When are Members required to notify?

21. Notification under Articles 1.3 and 3.1 is only required if a Member wishes to avail itself of one of the exceptions concerned.

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[4] It has been recognised that many Members have already communicated the texts of many of their laws and regulations to WIPO, in view of their obligations under, in particular, the Paris Convention or the Berne Convention.

22. Since notifications under these Articles are relevant to a Member's national treatment and m.f.n. obligations under the Agreement, it should be noted, as reflected in Section II above, that obligations relating to national treatment and m.f.n. are effective for all WTO Members as of 1 January 1996.

23. (Reference is also made to WTO/AIR/70.)

How should Members notify?

24. No special procedures have been adopted by the Council in respect of these notifications.[5]

[5] These notifications are being distributed in the IP/N/2/-series of documents

ARTICLE 4(d)

What are Members required to notify?

25. Under the m.f.n. provisions of Article 4 of the Agreement, each Member has to ensure that any advantage, favour, privilege or immunity that is available in its territory to certain foreign right holders is accorded to persons eligible under Article 1.3 for protection under the Agreement.

26. Article 4 specifies the exemptions to such m.f.n. treatment allowed by the Agreement. One of these exceptions, that in sub-paragraph (d), requires a notification, namely where the advantage in question derives from an international agreement related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement. The conditions for such exemptions are that the agreement in question is notified to the TRIPS Council and does not constitute an arbitrary or unjustifiable discrimination against persons eligible under Article 1.3 from other WTO Members.[6]

When are Members required to notify?

27. Notification under Article 4(d) is only required if a Member wishes to avail itself of the exception concerned.

28. As mentioned above in relation to Articles 1.3 and 3.1, it should be noted that obligations under Article 4 are effective for all WTO Members as of 1 January 1996.

29. Notifications under Article 4(d) can be made at any time. However, at the meeting of the TRIPS Council of 21 November 1995, the Chairman drew the attention of Members to the need to make notifications by 1 January 1996, if they wished to have legal cover from that date for any exceptions to m.f.n. treatment that they seek to justify by reference to the provisions of Article 4(d) (see document IP/C/M/4, paragraph 11).

How should Members notify?

30. No special procedures have been adopted by the Council in respect of these notifications.[7]

ARTICLE 69

What are Members required to notify?

31. Article 69 of the Agreement requires Members to establish and notify contact points in their administrations for the purposes of cooperation with each other aimed at the elimination of trade in infringing goods.

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[6] These notifications are being distributed in the IP/N/4/- series of documents

[7] However, it is generally felt in the TRIPS Council that it would be valuable to continue work on the development of criteria that could assist individual Members in making notifications under Article 4(d), and further consultations are being held on this matter. An informal background note prepared by the Secretariat (No. 2086 of 25 April 1996) identifies a number of factors that might be relevant to consideration as to whether a notification should be made under Article 4(d).

When are Members required to notify?

32. At the meeting of the TRIPS Council of 21 September 1995, Members agreed that notifications should be made by 1 January 1996 and that any subsequent changes to the information should be notified promptly.

How should Members notify?

33. The Council has agreed (see WTO/AIR/168) to invite each Member to notify the following information relating to the contact point, or each of the contact points, that it establishes for the purposes of Article 69:

- the name of the authority in question;
- its address; and
- its telephone and telefax numbers and, where appropriate, E-mail reference;

and, where appropriate, to identify at each contact point a contact official.[8]

ARTICLE 6*TER* OF THE PARIS CONVENTION

34. Article 6*ter* of the Paris Convention concerns the protection of state emblems, official hallmarks and the abbreviations and emblems of intergovernmental organizations against the registration or use as trademarks. Article 6*ter* applies in the TRIPS context by virtue of Article 2.1 of the TRIPS Agreement and lays down notification procedures for the communication by Members (and intergovernmental organizations) to other Members of such emblems that they do not wish to be capable of constituting valid trademarks and for the transmittal of objections to the protection claimed for an emblem.

35. The application of the provisions of Article 6*ter* for the purposes of the TRIPS Agreement is addressed in the Agreement Between WIPO and the WTO and in the Decision of the TRIPS Council of 11 December 1995 (document IP/C/7). Accordingly, communications under Article 6*ter* for the purposes of the TRIPS Agreement should be communicated through the intermediary of the International Bureau of WIPO, 34 chemin des Colombettes, 1211 Geneva 20.

36. As regards the practical effects for WTO Members, the following points should be noted:

- In respect of WTO Members that are also Member States of the Paris Convention (1967), all notifications made under Article 6*ter* of the Paris Convention itself will automatically apply under the TRIPS Agreement, whether they were made in the past or will be made in the future. This applies both to the communication of emblems and of objections to the protection claimed for an emblem.
- The same will apply in respect of WTO Members that are Member States of the Paris Convention but not of the 1967 version of that Convention, except if they are not obliged under the earlier version of the Paris Convention to protect emblems of intergovernmental organizations. In regard to these emblems, the

[8] These notifications are being distributed in the IP/N/3/- series of documents

procedures outlined below in respect of WTO Members that are not Member States of any version of the Paris Convention will apply.

- The International Bureau of WIPO has communicated, in January 1996, all emblems ~~communicated before January 1996~~ under Article 6*ter* of the Paris Convention to those WTO Members which are not Member States of the Paris Convention. After January 1996, a new WTO Member that is not a Member State of the Paris Convention is to receive a set of emblems as communicated to the International Bureau under the provisions of Article 6*ter* before the date that the WTO Agreement enters into force for the new Member in question.

- WTO Members that are not Member States of the Paris Convention are entitled to communicate emblems and to transmit objections through the International Bureau of WIPO in accordance with the procedures as administered by the International Bureau in the context of the Paris Convention (1967).

- WTO Members that are not Member States of the Paris Convention can, thus, transmit objections under Article 6*ter*(4)

  (i) within a time-limit of 12 months from receipt of the communication; or

  (ii) if they still benefit from a transitional period under Article 65 or 66 of the Agreement (see paragraph 2 above), within 12 months from the date on which their TRIPS obligations in respect of Article 6*ter* start applying.

  If such a WTO Member becomes a Member State of the Paris Convention before the date referred to under (ii), the time-limit for the transmittal of objections will be 12 months from the date of becoming Member of the Paris Convention.

OTHER NOTIFICATION REQUIREMENTS UNDER THE BERNE CONVENTION OR THE ROME CONVENTION INCORPORATED BY REFERENCE INTO THE TRIPS AGREEMENT

What are Members required to notify?

37. ~~Articles 14*bis*(2)(c) and 14*bis*(3) of the Berne Convention~~: Article 14*bis*(2)(b) of the Berne Convention as incorporated into the TRIPS Agreement applies to a WTO Member which in its legislation includes among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work. In such a Member it must be presumed that these authors have consented, in the absence of any contract to the contrary, to certain ways in which the film may be exploited. If such Member's legislation requires that the consent of the authors must have been in writing, Article 14*bis*(2)(c) requires that Member to inform other Members of this requirement by means of a notification. Article 14*bis*(3) requires that a Member the law of which does not make the presumption binding on the principal director of the film must similarly make a notification. The purpose of these notification requirements is to allow those concerned to know the Members the legislation of which applies the presumption in such a restricted way and to make their arrangements accordingly.

38. ~~Article 15(4) of the Berne Convention~~: Article 15(4) of the Berne Convention as incorporated into the TRIPS Agreement is mainly directed at the protection of folklore. It deals

with unpublished works where the identity of the author is unknown, but where there is every ground to presume that he or she is a national of a given WTO Member. In such a situation the Member concerned may designate a competent authority to protect the interests of the author. Other Members should be informed about this authority by means of a notification giving full information.

39. ~~Appendix to the Berne Convention~~: Article 9.1 of the TRIPS Agreement requires Members to comply with the Appendix to the Berne Convention (1971), which contains special provisions for developing countries. The Appendix contains a number of notification procedures which are discussed below.

(a) ~~Article I of the Appendix~~: Paragraph 1 requires a developing country Member wishing to avail itself of the possibilities provided in the Appendix to declare that it will avail itself of the faculty provided in Article II and/or Article III of the Appendix (compulsory licenses for, respectively, translations and reproductions) by means of a notification. According to paragraph 2 such declarations can be made for renewable periods of ten years. Such declaration may be renewed by means of a notification. Paragraph 5 deals with the possibility for a country to make notifications in respect of territories for which it has international responsibility.

(b) ~~Article II(3)(b) of the Appendix~~: This provision deals with the situation where a developing country Member secures the agreement of all developed Members, in which the same language is in general use as in that developing country Member, to provide for a shorter period than the usual three years after publication for the application of compulsory licences to substitute for the exclusive right of translation. The provision requires that any such agreement shall be notified.

(c) ~~Article IV(2) of the Appendix~~ : This provision deals with the situation where an applicant for a compulsory licence of the types provided for in Articles II and III cannot find the owner of the right in question. In such a situation, he or she must send a copy of the application to any national or international information centre which may have been designated by the Member in which the publisher of the work concerned is believed to have his principal place of business. The paragraph provides that such information centres must have been designated in a notification by the Member concerned.

(d) ~~Article IV(4)(c)(iv) of the Appendix~~: This provision allows developing country Members to export copies of translations made under compulsory licence, provided that a number of conditions are met: the language of the translation must not be English, French or Spanish; the recipients are individuals who are nationals of the Member whose competent authority has granted the license, or organizations grouping such individuals; the copies must be sent for teaching, scholarship or research purposes; there must be no commercial purpose; and there must be an agreement between the Member granting the licence and that to which the copies are sent. The provision requires that such an agreement shall be notified by the Member in which the license has been granted.

(e) ~~Article V of the Appendix~~: This Article provides that a developing country Member may choose, by way of a declaration made at the time of ratification or accession, the "ten-year rйgime" which appeared in the 1896 Act of the Berne Convention for translations instead of the compulsory licensing system provided for in Article II of the Appendix.

40. Article 17 of the Rome Convention: Article 14.6 of the TRIPS Agreement allows a WTO Member to avail itself of exceptions permitted under the Rome Convention. Article 17 of the Rome Convention allows a state which, on 26 October 1961 granted protection to producers of phonograms solely on the basis of the criterion of fixation to continue to do so, provided it makes a notification to this effect at the time of ratification, acceptance or accession.

41. Article 18 of the Rome Convention: Articles 1.3, 3.1 and 14.6 of the TRIPS Agreement relate to certain exceptions under the Rome Convention the invocation of which require notification. Article 18 of the Rome Convention provides that any state which has invoked such an exception by means of notifications under Articles 5(3), 6(2), 16(1) or 17 of the Rome Convention may, by a further notification, reduce the scope of or withdraw the notification in question.

When are Members required to notify?

42. Notifications under these provisions are only required if a Member wishes to take advantage of the provisions in question.

Articles 14*bis*(2)(c) and 14*bis*(3): WTO Members to which these notification requirements apply should make necessary notifications as of the relevant date referred to in paragraph 3 above. If a Member subsequently changes its legislation in a way that would require notification under these provisions, it should notify as of the time of the change.

Article 15(4) of the Berne Convention: The purpose of Article 15(4) of the Berne Convention is to facilitate benefitting from the protection available in other WTO Members. Therefore, it would be in the interest of a Member wishing to avail itself of the possibility stemming from the incorporation of the provisions of Article 15(4) of the Berne Convention into the TRIPS Agreement in relation to other WTO Members to notify the authority designated without delay, while being free to do so at any time.

The Appendix to the Berne Convention: Notification under Article I(1) of the Appendix may be deposited at the time of depositing the instrument of ratification or accession, or any time thereafter.

As far as the calculation of renewable periods of ten years is concerned (Article I(2) of the Appendix), this is a question that the Council would need to look into if any Member were to invoke any of the provisions of the Appendix as incorporated into the TRIPS Agreement.
Other notifications stemming from the incorporation of the provisions of the Appendix into the TRIPS Agreement can be made at any time. The only exception in this regard is Article V(1) as incorporated into the TRIPS Agreement which requires that the choice provided in that paragraph has to be made at the time of ratification or accession.

Articles 17 and 18 of the Rome Convention: A notification under Article 17 of the Rome Convention has to be made at the time of ratification, acceptance or accession. A further notification under Article 18 of the Rome Convention as incorporated into the TRIPS Agreement can be made at any time.

How should Members notify?

43. At its meeting of 22 February 1996, the TRIPS Council invited each Member wishing to make notifications under any of these provisions to make them to the TRIPS Council, even if the Member in question had already made a notification under the Berne Convention or the

Rome Convention in regard to the same issue.[9]

44. Otherwise, no special procedures have been adopted in respect of these notifications.

[9] These notifications are being distributed in the IP/N/5/- series of documents.

NOTIFICATION REQUIREMENT FOR DEVELOPED COUNTRY MEMBERS AS AGREED BY THE TRIPS COUNCIL IN THE CONTEXT OF ARTICLE 67

What are Members required to notify?

45. At its meeting of 22 to 25 July 1996, the Council for TRIPS agreed that each developed country Member should notify a contact point for technical cooperation on TRIPS, in particular for the exchange of information between donors and recipients of technical assistance.

When are Members required to notify?

46. Developed country Members have been requested to notify their contact point(s) by 1 September 1996 (see WTO/AIR/388).[10]

How should Members notify?

47. Developed country Members have been requested to notify, in particular, the following information concerning their contact point(s):

(i) the name of the authority in question;

(ii) its address;

(iii) its telephone and telefax numbers and, where appropriate, E-mail reference; and

(iv) where appropriate, to identify at each contact point a contact official.

[10] These notifications are being distributed in the IP/N/7 series of documents.

TRIPS-II

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

NOTIFICATION OBLIGATIONS

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NOTIFICATION OBLIGATIONS

Item	Notification requirement	Type of measure	Periodicity	Format	Members notifying	To whom
1.	TRIPS Agreement, Art. 1.3 - producers of phonograms	Stipulation in the notifying Member's law of limited eligibility criteria for the protection of producers of phonograms (by excluding either the criterion of fixation or the criterion of publication) [in accordance with the provisions of Article 5(3) of the "Rome Convention"]	*Ad hoc*	IP/C/W/5 (guidelines)	WTO Members - *ad hoc*	Council for TRIPS
2.	TRIPS Agreement, Art. 1.3 - broadcasting organizations	Stipulation in the notifying Member's law of limited eligibility criteria for the protection of broadcasting organizations (to those having their headquarters in a WTO Member and transmitting a broadcast from the same Member) [in accordance with the provisions under Article 6(2) of the "Rome Convention"]	*Ad hoc*	IP/C/W/5 (guidelines)	WTO Members - *ad hoc*	Council for TRIPS
3.	TRIPS Agreement, Art. 2.1	Protection against registration or use as a	*Ad hoc*	In accordance	WTO	WIPO (see

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

NOTIFICATION OBLIGATIONS

Item	Notification requirement	Type of measure	Periodicity	Format	Members notifying	To whom
	[Article 6*ter*(3) of the "Paris Convention (1967)"]	trademark (of State emblems, and official signs and hallmarks indicating control and warranty, or armorial bearings, flags, other emblems, abbreviations, and names of intergovernmental organizations)		with the procedures applicable in WIPO under Article 6*ter* of the Paris Convention (1967)	Members - *ad hoc*	Article 3 of the Agreement Between WIPO and the WTO and document IP/C/7)
4.	TRIPS Agreement, Art. 3.1 - literary or artistic works	Specification by the notifying Member of countries which are not WTO Members, whose nationals will be subject to restrictions concerning the eligibility for national treatment in respect of literary or artistic works first published in a WTO Member, unless they are habitually resident in a WTO Member [in accordance with the provisions of Article 6(3) of the "Berne Convention (1971)"]	*Ad hoc*	IP/C/W/5 (guidelines)	WTO Members - *ad hoc*	Council for TRIPS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

NOTIFICATION OBLIGATIONS

Item	Notification requirement	Type of measure	Periodicity	Format	Members notifying	To whom
5.	TRIPS Agreement, Art. 3.1 - broadcasting rights	Stipulation in the notifying Member's law limiting the rights to be provided to broadcasting organizations under Article 14.3 of the TRIPS Agreement as regards the right stipulated in Article 13(d) [in accordance with the provisions of Article 16(1)(b) of the "~~Rome Convention~~"]. As a result, other WTO Members will be allowed to limit the eligibility for national treatment in respect of this right correspondingly.	*Ad hoc*	IP/C/W/5 (guidelines)	WTO Members - *ad hoc*	Council for TRIPS
6.	TRIPS Agreement, Art. 4(d)	Limitation of MFN treatment on the basis of an international agreement (related to intellectual property which entered into force prior to the date of entry into force of the WTO Agreement)	*Ad hoc*	No	WTO Members - *ad hoc*	Council for TRIPS
7.	TRIPS Agreement, Art. 9.1 [Art. 14*bis*(2)(c) of the "~~Berne~~	Stipulation in the notifying Member's law that the rule that certain authors are to be	*Ad hoc*	IP/C/W/15 (guidelines)	WTO Members -	Council for TRIPS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

NOTIFICATION OBLIGATIONS

Item	Notification requirement	Type of measure	Periodicity	Format	Members notifying	To whom
	Convention (1971)"]	presumed to have consented to certain ways in which their film is exploited must have been in writing			*ad hoc*	
8.	TRIPS Agreement, Art. 9.1 [Art. 14*bis*(3) of the "Berne Convention (1971)"]	Stipulation in the notifying Member's law that the rule that certain authors are to be presumed to have consented to certain ways in which their film is exploited is not binding on the principal director of the film	*Ad hoc*	IP/C/W/15 (guidelines)	WTO Members - *ad hoc*	Council for TRIPS
9.	TRIPS Agreement, Art. 9.1 [Art. 15(4) of the "Berne Convention (1971)"]	Designation of the competent authority to represent unknown authors of folklore	*Ad hoc*	IP/C/W/15 (guidelines)	WTO Members - *ad hoc*	Council for TRIPS
10.	TRIPS Agreement, Art. 9.1 [Art. I of the Appendix to the "Berne Convention (1971)"]	Declaration by the notifying developing country Member that it avails itself of the faculty of compulsory licensing for translations/reproductions	*Ad hoc* (every 10 years)	IP/C/W/15 (guidelines)	Developing country WTO Members	Council for TRIPS
11.	TRIPS Agreement, Art. 9.1 [Art. II(3)(b) of the Appendix to the "Berne Convention (1971)"]	Agreement that the notifying developing country Member secured of all developed country Members, in which the same language is in general use as in that	*Ad hoc*	IP/C/W/15 (guidelines)	Developing country WTO Members	Council for TRIPS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

NOTIFICATION OBLIGATIONS

Item	Notification requirement	Type of measure	Periodicity	Format	Members notifying	To whom
	(1971)"]	developing country Member, to provide for a shorter period than the usual three years after publication for the application of compulsory licensing to substitute for the exclusive right of translation			Members	
12.	TRIPS Agreement, Art. 9.1 [Art. IV(2) of the Appendix to the "Berne Convention (1971)"]	Designation of an information center for the purposes of compulsory licensing	*Ad hoc*	IP/C/W/15 (guidelines)	Developing country WTO Members	Council for TRIPS
13.	TRIPS Agreement, Art. 9.1 [Art. IV(4)(c)(iv) of the Appendix to the "Berne Convention (1971)"]	Agreement between the notifying developing country Member granting a compulsory licence for the export of copies of translations made under the compulsory licence and another WTO Member to which the copies are sent and allowing for such exports	*Ad hoc*	IP/C/W/15 (guidelines)	Developing country WTO Members	Council for TRIPS
14.	TRIPS Agreement, Art. 9.1 [Art. V(1)(ii) of the Appendix to the "Berne Convention	Application of the 10 year régime instead of compulsory licensing	*Ad hoc* (at the time of ratification,	IP/C/W/15 (guidelines)	Developing country WTO	Council for TRIPS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

NOTIFICATION OBLIGATIONS

Item	Notification requirement	Type of measure	Periodicity	Format	Members notifying	To whom
	(1971)"]		acceptance or accession)		Members	
15.	TRIPS Agreement, Art. 14.6 [Art. 17 of the "Rome Convention"]	Protection of producers of phonograms solely on the basis of the criterion of fixation	*Ad hoc* (at the time of ratification, acceptance or accession)	IP/C/W/15 (guidelines)	WTO Members	Council for TRIPS
16.	TRIPS Agreement, Art. 14.6 [Art. 18 of the "Rome Convention"]	Reduction of scope or withdrawal of earlier notification of an exception under Article 5(3), 6(2), 16(1) or 17 of the Rome Convention as incorporated into the TRIPS Agreement	*Ad hoc*	IP/C/W/15 (guidelines)	WTO Members	Council for TRIPS
17.	TRIPS Agreement, Art. 63.2	Laws / regulations made effective by the notifying Member (pertaining to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights)	Once (as soon as possible after an obligation under the TRIPS Agreement	IP/C/2 IP/C/4 IP/C/5	WTO Members	Council for TRIPS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

NOTIFICATION OBLIGATIONS

Item	Notification requirement	Type of measure	Periodicity	Format	Members notifying	To whom
			becomes effective)			
18.	TRIPS Agreement, Art. 63.2	Amendment of a law / regulation (pertaining to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights)	*Ad hoc* (in case of subsequent modifications of laws and regulations or the introduction of new ones)	IP/C/2 IP/C/4 IP/C/5	WTO Members - *ad hoc*	Council for TRIPS
19.	TRIPS Agreement, Art. 69	Specification of contact points (in Members' administrations for, among other things, exchanging information on trade in goods infringing intellectual property rights)	Once (1 January 1996 or, for new Members, promptly upon accession)	WTO/AIR/168	WTO Members	Council for TRIPS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

NOTIFICATION OBLIGATIONS

Item	Notification requirement	Type of measure	Periodicity	Format	Members notifying	To whom
20.	TRIPS Agreement, Art. 69	Changes to the information on specified contact points (in Members' administrations for, among other things, exchanging information on trade in goods infringing intellectual property rights)	*Ad hoc*	WTO/AIR/168	WTO Members - *ad hoc*	Council for TRIPS
21.	As agreed by the Council for TRIPS in the context of Article 67 of the TRIPS Agreement (IP/C/M/8, paragraphs 37 and 38)	Specification by the notifying developed country Member of contact points for technical cooperation on TRIPS	Once (1 September 1996)	WTO/AIR/388	Developed country WTO Members	Council for TRIPS

TRIPS-III

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

DOCUMENTS
IP/C/2
IP/C/3
IP/C/4
IP/C/5
IP/C/7
IP/C/W/3
IP/C/W/5
IP/C/W/8
IP/C/W/15
IP/C/W/20
WTO/AIR/70
WTO/AIR/168
WTO/AIR/388

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WORLD TRADE ORGANIZATION

IP/C/2

30 November 1995

(95-3867)

Council for Trade-Related Aspects of Intellectual Property Rights

PROCEDURES FOR NOTIFICATION OF, AND POSSIBLE ESTABLISHMENT OF A COMMON REGISTER OF, NATIONAL LAWS AND REGULATIONS UNDER ARTICLE 63.2

Decision of the Council for TRIPS of 21 November 1995

These procedures will be reviewed by the Council, in the light of experience, at the end of 1997, *inter alia* to identify any elements which have proved unduly burdensome in relation to the usefulness of the information provided.

Section 1: General

1. Each Member shall notify to the TRIPS Council, through the WTO Secretariat, its laws and regulations pertaining to the subject matter of the TRIPS Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights), in accordance with the guidelines set out below.

2.1 As of the time that a Member is obliged to start applying a provision of the TRIPS Agreement, the corresponding laws and regulations shall be notified without delay (normally within 30 days, except where otherwise provided by the TRIPS Council).

2.2 Any subsequent amendments of a Member's laws and regulations shall be notified without delay after their entry into force (normally within 30 days where no translation is required and within 60 days where translation is necessary).

3. A Member who has amended a law or regulation to bring it into conformity with provisions of the TRIPS Agreement in advance of its obligation under the TRIPS Agreement to start applying those provisions will use its best endeavours to notify such law or regulation as soon as possible after its entry into force.

4. Where, on the date of its initial notification of a law or regulation relating to a provision of the TRIPS Agreement, a Member has already communicated the law or regulation in question to the International Bureau of WIPO in a language or languages consistent with these guidelines, that Member would be free, if it so wishes, to provide the WTO Secretariat with a statement to the effect that the full text can be found in the WIPO collections, instead of sending the full text to the WTO Secretariat. The WTO Secretariat would seek from the International Bureau of WIPO a copy from its collections which would then be treated in accordance with Sections 2 and 3 below.

5. Wherever possible, notifications shall be made in machine-readable as well as hard copy form.

Section 2: Main dedicated intellectual property laws and regulations

6. Each Member shall notify in a WTO language the texts of its main laws and regulations dedicated to intellectual property. These laws and regulations would include the main laws and regulations on the availability, scope and acquisition of each of the categories of intellectual property covered by the TRIPS Agreement, together with such other main laws and regulations as are dedicated to intellectual property, such as those on border enforcement.

7. These laws and regulations will be immediately circulated in the relevant WTO language by the WTO Secretariat to Members of the TRIPS Council as Council documents. Translation into other WTO languages will only be undertaken by the WTO Secretariat on the request of a Member made in the TRIPS Council and within the limits of the WTO Secretariat's resources.

8. Where an authentic national text of a law or regulation is not available in a WTO language, copies of the authentic text of that law or regulation in a national language shall be notified, in addition to the translation into a WTO language. Such copies shall be available in the WTO Secretariat for consultation by interested delegations.

Section 3: Other laws and regulations

9. This heading relates to all national laws and regulations which are not dedicated to intellectual property rights as such but which nonetheless pertain to the availability, scope, acquisition, enforcement and prevention of abuse of intellectual property rights (notably laws and regulations in the areas of enforcement and the prevention of abusive practices) as well as those laws and regulations dedicated to intellectual property which are not considered "main laws and regulations" falling under Section 2 above.

10. Each Member shall notify these laws and regulations in a national language to the WTO Secretariat. They shall also provide in a WTO language a listing of these laws and regulations, together with a brief description of the relevance of each law and regulation to the provisions of the TRIPS Agreement.

11. This listing will be distributed as a TRIPS Council document to the Members of the TRIPS Council. The copies of the laws and regulations in question will be available for consultation in the WTO Secretariat by interested delegations. Copies will only be distributed as Council documents if a request is made in the TRIPS Council. If such a request is made and where the law and regulation in question has not been notified in a WTO language, the notifying Member shall make available a copy of the law or regulation, or relevant part of the law or regulation, in a WTO language. Members agree to keep such requests to a minimum and, wherever possible, to seek the translation of a particular part of a legislative instrument, rather than request the whole text to be translated.

12. In regard to the provisions of the TRIPS Agreement on enforcement, each Member shall, in addition, provide, as soon as possible after the date of its application of these provisions, responses to the attached checklist of issues contained in document IP/C/5 indicating how its national legislation responds to the requirements of the TRIPS Agreement identified in the checklist. These responses shall identify the relevant provisions of national

laws and regulations. The responses will be circulated as a document of the TRIPS Council.

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IP/C/3

30 November 1995

(95-3868)

WORLD TRADE ORGANIZATION

Council for Trade-Related Aspects of Intellectual Property Rights

SCHEDULE FOR CONSIDERATION OF NATIONAL IMPLEMENTING LEGISLATION IN 1996/1997

Decision of the Council for TRIPS of 21 November 1995

At its meeting of 21 November 1995, the Council for TRIPS adopted the attached schedule for the consideration of national implementing legislation in 1996/1997.

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SCHEDULE FOR CONSIDERATION OF NATIONAL IMPLEMENTING LEGISLATION IN 1996/1997

Decision of the Council for TRIPS of 21 November 1995

SUBJECT AREA	DATE FOR SUBMISSION OF THE LAWS AND REGULATIONS (REQUIRING TRANSLATION)	DATE BY WHICH ADVANCE NOTICE OF QUESTIONS TO BE GIVEN	DATE FOR DISCUSSION IN COUNCIL
Copyright and Related Rights	End January 1996	End April 1996	July 1996
Trademarks Geographical Indications Industrial Designs	End January 1996	End August 1996	November 1996
Patents Layout-Designs of Integrated Circuits Undisclosed Information Control of Anti-competitive Practices in Contractual Licenses	End January 1996 (End May 1996)	(Date to be determined)	1997 (Exact date to be determined)
Enforcement	End January 1996 (End July 1996)	(Date to be determined)	1997 (Exact date to be determined)

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IP/C/4

30 November 1995

(95-3869)

WORLD TRADE ORGANIZATION

Council for Trade-Related Aspects of Intellectual Property Rights

FORMAT FOR LISTING OF "OTHER LAWS AND REGULATIONS" TO BE NOTIFIED UNDER ARTICLE 63.2

Decision of the Council for TRIPS of 21 November 1995

1. When notifying "other laws and regulations" in accordance with Section 3 of the Decision on Procedures for Notification of, and Possible Establishment of a Common Register of, National Laws and Regulations under Article 63.2 (IP/C/2), each Member shall provide the listing of such laws and regulations on the basis of the attached format.

2. The listings shall be structured along the lines of the categorization in the TRIPS Agreement itself, i.e.

Copyright and related rights
Trademarks
Geographical indications
Industrial designs
Patents (including plant variety protection)
Layout-designs (topographies) of integrated circuits
Protection of undisclosed information

Prevention of the abuse of intellectual property rights

Civil judicial procedures and remedies
Provisional judicial measures
Special requirements related to border measures
Criminal procedures
Any administrative procedures and remedies not covered above

Where a law or regulation is relevant to more than one heading, it would need to be mentioned under each of the relevant headings.

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FORMAT FOR LISTING OF "OTHER LAWS AND REGULATIONS"

TITLE DATE OF ADOPTION AND ENTRY INTO FORCE	BRIEF DESCRIPTION
Copyright and related rights	
Trademarks	
Geographical indications	
etc. *(see headings in paragraph 2 above)*	

TITLE DATE OF ADOPTION AND ENTRY INTO FORCE	BRIEF DESCRIPTION

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WORLD TRADE ORGANIZATION

IP/C/5
30 November 1995

(95-3870)

Council for Trade-Related Aspects of Intellectual Property Rights

CHECKLIST OF ISSUES ON ENFORCEMENT

Decision of the Council for TRIPS of 21 November 1995

In providing information on national enforcement law and practices in response to the checklist of issues below, as soon as possible after the time that a Member is obliged to start applying the provisions of the TRIPS Agreement on enforcement, each Member should identify the relevant provisions of national laws and regulations. Where a response differs according to the intellectual property right (IPR) in question, the response should be given on an IPR-by-IPR basis. The checklist follows the structure of Part III of the TRIPS Agreement; when considering what information would be relevant in response to the issues listed, Members may wish to consult the corresponding provision of Part III of the TRIPS Agreement on the Enforcement of Intellectual Property Rights.

The checklist will be reviewed by the Council, in the light of experience at the end of 1997, *inter alia* to identify any elements which have proven unduly burdensome in relation to the usefulness of the information provided.

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

1. Specify the courts which have jurisdiction over IPR infringement cases.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?

3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its

control?

4. What means exist to identify and protect confidential information brought forward as evidence?

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use:

   - injunctions;

   - damages, including recovery of profits, and expenses, including attorney's fees;

   - destruction or other disposal of infringing goods and materials/implements for their production;

   - any other remedies.

6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

(b) Administrative procedures and remedies

9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

Provisional Measures

(a) Judicial measures

10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.

11. In what circumstances may such measures be ordered *inaudita altera parte*?

12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

(b) Administrative measures

14. Reply to the above questions in relation to any administrative provisional measures.

Special Requirements Related to Border Measures

15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?

16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?

17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?

18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?

19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.

Criminal Procedures

20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.

21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?

22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?

23. Do private persons have standing to initiate criminal proceedings and, if so, who?

24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:

- imprisonment;
- monetary fines;
- seizure, forfeiture and destruction of infringing goods and materials and implements for their production;
- other.

25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.

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IP/C/7

12 January 1996

(96-0098)

WORLD TRADE ORGANIZATION

Council for Trade-Related Aspects of Intellectual Property Rights

IMPLEMENTATION OF THE OBLIGATIONS UNDER THE TRIPS AGREEMENT STEMMING FROM THE INCORPORATION OF THE PROVISIONS OF ARTICLE 6*TER* OF THE PARIS CONVENTION (1967)

Decision of the Council for TRIPS of 11 December 1995

For the purposes of the implementation of obligations between WTO Members under the TRIPS Agreement stemming from the incorporation into the TRIPS Agreement of the provisions of Article 6*ter* of the Paris Convention (1967), the following arrangements shall apply:

(i) the communication of emblems and the transmittal of objections between WTO Members by the International Bureau of the World Intellectual Property Organization in accordance with the Agreement between the World Intellectual Property Organization and the World Trade Organization of 22 December 1995 shall constitute the communication of emblems and the transmittal of objections under the TRIPS Agreement;

(ii) on the date that Article 2 of the TRIPS Agreement applies to a WTO Member that is also a State party to the Paris Convention, that WTO Member shall have the same obligations under the TRIPS Agreement vis-a-vis other WTO Members also States party to the Paris Convention that it has under the Paris Convention, without prejudice to the additional obligations under the TRIPS Agreement on WTO Members not bound under the Paris Convention to protect the emblems of international intergovernmental organizations;

(iii) where an emblem is communicated to a WTO Member from another WTO Member and at least one of the WTO Members in question is not a party to the Paris Convention, the period of 12 months available under the TRIPS Agreement for the transmittal of objections pursuant to the provisions of Article 6*ter*(4) of the Paris Convention shall not begin earlier than the date of application of Article 2 of the TRIPS Agreement by the WTO Member receiving the communication. The same shall apply in respect of any communication of an emblem of an international intergovernmental organization to a WTO Member not party to the Paris Convention or not bound under the Paris Convention to protect such emblems.

For the purposes of the above, "emblem" means any armorial bearing, flag and other State emblem of a WTO Member, or any official sign or hallmark indicating control and warranty adopted by it, and, in the case of an international intergovernmental organization, any armorial bearing, flag, other emblem, abbreviation or name of that organization.

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WORLD TRADE ORGANIZATION

IP/C/W/3

26 April 1995

(95-1062)

Council for Trade-Related Aspects of Intellectual Property Rights

NOTIFICATIONS ALREADY MADE UNDER THE PROVISIONS OF THE BERNE CONVENTION AND THE ROME CONVENTION REFERRED TO IN ARTICLES 1.3 AND 3.1 OF THE TRIPS AGREEMENT

Note by the Secretariat

1. At its meeting of 9 March 1995, the Council for TRIPS discussed the question of procedures for notifications under Articles 1.3 and 3.1 of the TRIPS Agreement. In order to facilitate further deliberations on this matter, the Council requested the Secretariat to compile, with the assistance of the WIPO and the United Nations Legal Office, a complete listing of the notifications already made under the relevant provisions of the Berne Convention and the Rome Convention.

2. In response to this request, this Note and its Annex lists the notifications already made under Article 6 of the Berne Convention and Articles 5(3), 6(2) and 16(1)(b) of the Rome Convention which are referred to in Articles 1.3 and 3.1 of the TRIPS Agreement.

The Berne Convention

3. The provision contained in Article 6 of the Paris Act (1971) of the Berne Convention was first added as a protocol in 1914 and later included in the Berne Convention proper in the Rome Act (1928). Since then only minor changes have been made to it. According to the information provided by the International Bureau of the WIPO, whose Director General is the depositary of the Stockholm Act (1967) and the Paris Act (1971) of the Berne Convention, no notification has been made under Article 6(3) of either of the said Acts.

The Rome Convention

4. The Annex to this Note contains the notifications already made under Articles 5(3) and 6(2) of the Rome Convention, which are referred to in Article 1.3 of the TRIPS Agreement, and Article 16(1)(b) of the Rome Convention, which is referred to in Article 3.1 of the TRIPS Agreement. The Annex is prepared on the basis of an up-to-date list of States parties to the Rome Convention and the corresponding texts of reservations and declarations that was provided on 29 March 1995 by the Treaty Section of the Office of Legal Affairs of the United Nations, whose Secretary-General is the depositary of the Convention. The documents were extracts from the publication Multilateral Treaties Deposited with the Secretary-General, which is published in English and French only. The depositary notifications, on the basis of which this publication is prepared, are drafted in English and French only.

5. The Annex reproduces the texts of only those reservations and declarations contained in the documents provided by the United Nations that relate to the provisions of the Rome Convention which are referred to in Articles 1.3 and 3.1 of the TRIPS Agreement. The complete listing of all reservations and declarations and other information on the status of the Rome Convention is available in the above mentioned publication. The complete listing is also

available in the WTO Secretariat for consultation by interested delegations.

ANNEX

INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS

Done at Rome on 26 October 1961

ENTRY INTO FORCE: 18 May 1964, in accordance with article 25.
REGISTRATION: 18 May 1964, No. 7247.
TEXT: United Nations, *Treaty Series,* VOL. 496, P.43.
STATUS: Signatories: 26. Parties: 47.

Note: The Convention was drawn up by the Diplomatic Conference on the International Protection of Performers, Producers of Phonograms and Broadcasting Organisations convened jointly by the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the International Union for the Protection of Literary and Artistic Works. The Conference was held at Rome at the invitation of the Government of Italy from 10 to 26 October 1961.

Participant	*Signature, succession (d)*	*Ratification, accession (a) succession (d)*		*Participant*	*Signature, succession (d)*	*Ratification, accession (a) succession (d)*	
Argentina	26 Oct 1961	2 Dec 1991		Iceland	26 Oct 1961	15 Mar 1994	
Australia		30 Jun 1992	*a*	India	26 Oct 1961		
Austria	26 Oct 1961	9 Mar 1973		Ireland	30 Jun 1962	19 Jun 1979	
Barbados		18 Jun 1983	*a*	Israel	7 Feb 1962		
Belgium	26 Oct 1961			Italy	26 Oct 1961	8 Jan 1975	
Bolivia		24 Aug 1993	*a*	Jamaica		27 Oct 1993	*a*
Bosnia and Herzegovina	12 Jan 1994 *d*			Japan	26 Jul 1989	*a*	
Brazil	26 Oct 1961	29 Jun 1965		Lebanon	26 Jun 1962		
Burkina Faso		14 Oct 1987	*a*	Lesotho		26 Oct 1989	*a*
Cambodia	26 Oct 1961			Luxembourg		25 Nov 1975	
a							
Chile	26 Oct 1961	5 Jun 1974		Mexico	26 Oct 1961	17 Feb 1964	
Colombia		17 Jun 1976	*a*	Monaco	22 Jun 1962	6 Sep 1985	
Congo		29 Jun 1962	*a*	Netherlands		7 Jul 1993	*a*
Costa Rica		9 Jun 1971	*a*	Niger		5 Apr 1963	*a*
Czech Republic		30 Sep 1993	*d*	Nigeria		29 Jul 1993	*a*
Denmark	26 Oct 1961	23 Jun 1965		Norway		10 Apr 1978	*a*
Dominican Republic		27 Oct 1986	*a*	Panama		2 Jun 1983	*a*
Ecuador	26 Jun 1962	19 Dec 1963		Paraguay	30 Jun 1962	26 Nov 1969	
El Salvador		29 Mar 1979	*a*	Peru		7 May 1985	*a*
Fiji		11 Jan 1972	*a*	Philippines		25 Jun 1984	*a*
Finland	21 Jun 1962	21 Jul 1983		Slovakia		28 May 1993	*d*
France	26 Oct 1961	3 Apr 1987		Spain	26 Oct 1961	14 Aug 1991	
Germany	26 Oct 1961	21 Jul 1966		Switzerland		24 Jun 1983	*a*
Greece		6 Oct 1992	*a*	Sweden	26 Oct 1961	13 Jul 1962	
Guatemala		14 Oct 1976	*a*	United Kingdom	26 Oct 1961	30 Oct 1963	
Holy See	26 Oct 1961			Uruguay		4 Apr 1977	*a*

Honduras	16 Nov 1989	*a*	Yugoslavia	26 Oct 1961
Hungary	10 Nov 1994	*a*		

Declarations and Reservations under Articles 5 (3), 6 (2) and 16 (1) (b)
(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

AUSTRALIA

Declarations:

Australia, pursuant to article 5 (3), will not apply the criterion of publication;

Australia, pursuant to article 6 (2), will protect broadcasts only if the headquarters of the broadcasting organisation is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State;

...

Australia, pursuant to article 16 (1) (b), will not, as regards article 13, apply item (d) of that article.

AUSTRIA

...

3. In accordance with article 16, paragraph 1 (b), of the Convention, Austria will not apply article 13 (d).

CONGO

In a communication received on 16 May 1964, the Government of the Congo has notified the Secretary-General that it has decided to make its accession subject to the following declarations:

(1) Article 5, paragraph 3: the "criterion of publication" is excluded;

...

DENMARK

1) *With regard to article 6, paragraph 2:* Protection will be granted to broadcasting organisations only if their headquarters is situated in another Contracting State and if their broadcasts are transmitted from a transmitter situated in the same Contracting State.

...

FIJI

(1) In respect of Article 5 (1) (b) and in accordance with Article 5 (3) of the Convention, Fiji will not apply, in respect of phonograms, the criterion of fixation;

(2) In respect of Article 6 (1) and in accordance with Article 6 (2) of the Convention, Fiji will protect broadcasts only if the headquarters of the broadcasting organisation is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State;

...

FRANCE

Article 5

The Government of the French Republic declares, in conformity with article 5, paragraph 3 of the Convention, concerning the protection of phonograms, that it rejects the criterion of the first publication in favour of the criterion of first fixation.

...

GERMANY

1. The Federal Republic of Germany makes use of the following reservations provided for in article 5, paragraph 3, and article 16, paragraph 1 a (iv) of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations:

1) As regards the protection of producers of phonograms it will not apply the criterion of fixation referred to in article 5, paragraph 1 (b) of the Convention;

...

ICELAND

Declarations:

Iceland, pursuant to article 5, paragraph 3, will not apply the criterion of fixation.

Iceland, pursuant to article 6, paragraph 2, will protect broadcasts only if the headquarters of the broadcasting organisation is situated in another Contracting State and if the broadcast was transmitted from a transmitter situated in the same Contracting State.

...

IRELAND

(1) With regard to article 5, paragraph 1, and in accordance with article 5, paragraph 3, of the Convention: Ireland will not apply the criterion of fixation;

(2) With regard to article 6, paragraph 1, and in accordance with article 6, paragraph 2, of the Convention: Ireland will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State;

...

ITALY

(1) With regard to article 6, paragraph 1, and in accordance with article 6, paragraph 2, of the Convention: Italy will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State;

...

(3) With regard to article 13 and in accordance with article 16, paragraph 1 (b), of the Convention: Italy will not apply the provisions of article 13 (d);

...

JAPAN

Declaration:

(1) Pursuant to article 5, paragraph 3 of the Convention, the Government of Japan will not apply the criterion of publication concerning the protection of producers of phonograms,

...

LESOTHO

Reservations:

...

With regard to article 13:

... [The Kingdom of Lesotho] does not consider itself bound by the provisions of item (d).

LUXEMBOURG

1. With regard to the protection of producers of phonograms, Luxembourg will not apply the criterion of publication but only the criteria of nationality and fixation, in accordance with article 5, paragraph 3, of the Convention.

...

3. With regard to broadcasting organizations, in accordance with article 16, paragraph 1 (b), of the Convention, Luxembourg will not apply the protection envisaged in article 13 (d) against communication to the public of their television broadcasts.

MONACO

Reservations:

1. With regard to the protection of producers of phonograms, Monaco will not apply the criterion of publication but only the criteria of nationality and fixation, in accordance with article 5, paragraph 3.

...

3. With regard to broadcasting organizations, in accordance with article 16, paragraph 1 (b), Monaco will not apply the provisions of article 13(d) concerning protection against communication to the public of television broadcasts.

NIGER

Declarations:

(1) Article 5, paragraph 3: the "criterion of publication" is excluded;

...

NIGERIA

Declarations:

1. With regard to article 5, paragraph 3, the Federal Republic of Nigeria will not apply the criteria of publication under article 5, paragraph 1 (c).

2. With regard to article 6, paragraph 2, the Federal Republic of Nigeria will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting State and if the broadcast is transmitted from a transmitter situated in the same Contracting State.

...

NORWAY

Reservations:

...

d) Pursuant to article 6, paragraph 2, reservation is made to the effect that broadcasts are only protected if the headquarters of the broadcasting organisation is situated in another Contracting State, and the broadcast is transmitted from a transmitter in the same Contracting State.

...

SPAIN

Declarations:

Article 5

[The Government of Spain] will not apply the criterion of first publication and will apply instead the criterion of first fixation.

Article 6

[The Government of Spain] will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State.

...

SWITZERLAND

Reservations:

Ad article 5

The Swiss Government declares, in accordance with article 5, paragraph 3 of the Convention, that it rejects the criterion of first fixation. It will therefore apply the criterion of first publication.

...

SWEDEN

...

(d) With regard to article 16, paragraph 1, sub-paragraph (b): the provisions of article 13, item (d), will be applied only with respect to the communication to the public of television broadcasts in a cinema or similar place.

...

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

(1) In respect of article 5(1) (b) and in accordance with article 5(3) of the Convention, the United Kingdom will not apply, in respect of phonograms, the criterion of fixation;

(2) In respect of article 6 (1) and in accordance with article 6 (2) of the Convention, the United Kingdom will protect broadcasts only if the headquarters of the broadcasting organisation is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State;

...

	Territorial Application	
Participant	*Date of receipt of the notification*	*Territories*
United Kingdom[11]	20 Dec 1966	Gibraltar
	10 Mar 1970	Bermuda

[11]The territorial applications were effected subject to the same declarations as those made on behalf of the United Kingdom upon ratification of the Convention.

RESTRICTED

WORLD TRADE ORGANIZATION

IP/C/W/5

18 May 1995

(95-1311)

Council for Trade-Related Aspects of Intellectual Property Rights

NOTIFICATION POSSIBILITIES PROVIDED IN ARTICLES 1.3 AND 3.1 OF THE TRIPS AGREEMENT

Background Note by the Secretariat

1. Articles 1.3 and 3.1 of the TRIPS Agreement allow Members to avail themselves of certain options in regard to the definition of beneficiary persons and national treatment, provided that notifications are made to the TRIPS Council. In response to requests from delegations, the Secretariat has prepared this note in order to attempt to explain the nature of the options available to delegations and of the notifications required.

I. Article 1.3 of the TRIPS Agreement

2. Article 1.3 defines the persons of other Members that each Member must accord the treatment in regard to the protection of intellectual property provided for under the Agreement. These persons are referred to as "nationals" but include persons, natural or legal, who have a close attachment to other Members without necessarily being nationals. The criteria for determining which persons must thus benefit from the treatment provided for under the Agreement are those laid down for this purpose in the main pre-existing intellectual property conventions, applied of course with respect to all WTO Members, whether or not they are party to those conventions.

3. In relation to performers, producers of phonograms and broadcasting organizations, Article 1.3 of the TRIPS Agreement requires each Member of the WTO to apply the same criteria for determining eligible beneficiaries as provided in the relevant provisions of the Rome Convention. Articles 4, 5 and 6 of the Rome Convention lay down the criteria for this purpose. However, according to Articles 5(3) and 6(2) of the Rome Convention, certain criteria applicable to producers of phonograms and broadcasting organizations may be excluded by means of a notification. Article 1.3 of the TRIPS Agreement requires any TRIPS Member availing itself of these possibilities to make such a notification to the Council for TRIPS.

(a) Producers of phonograms

4. In accordance with the criteria specified in Article 5(1) of the Rome Convention as incorporated into the TRIPS Agreement, each Member of the WTO has to protect producers of phonograms if any one of the following conditions is met:

(a) the producer of the phonogram is a national of another WTO Member (criterion of nationality);

(b) the first fixation of the sound was made in another WTO Member (criterion of fixation);

(c) the phonogram was first published in another WTO Member (criterion of publication).

It is sufficient if one of these conditions is satisfied.[12]

5. The criterion of nationality may not be excluded. However, in accordance with the provisions of Article 5(3) of the Rome Convention, a WTO Member may declare by means of a notification that it does not apply either the criterion of fixation or that of publication. No Member may exclude both at the same time. If a Member does not make any notification, it will have to protect each phonogram producer which meets any one of the three criteria.

(b) ~~Broadcasting organizations~~

6. In accordance with the criteria specified in Article 6(1) of the Rome Convention, each WTO Member has to protect broadcasting organizations if either of the following conditions is met:

(a) the headquarters of the broadcasting organization is situated in another WTO Member;

(b) the broadcast was transmitted from a transmitter situated in another WTO Member.

7. In accordance with the provisions of Article 6(2) of the Rome Convention as incorporated into the TRIPS Agreement, a WTO Member may declare by means of a notification that it will protect broadcasts only if both conditions are met, i.e. that the headquarters of the broadcasting organization is situated in another WTO Member and the broadcast was transmitted from a transmitter situated in the same WTO Member. Once more, if no notification is made, a WTO Member will have to protect broadcasting organizations which meet either of the criteria.

II. Article 3.1 of the TRIPS Agreement

8. Article 3.1 lays down the basic national treatment obligation. Each Member is obliged to accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property. This obligation is subject to the exceptions already provided in the Paris, Berne and Rome Conventions and the Treaty on Intellectual Property in Respect of Integrated Circuits. Furthermore, in respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under the TRIPS Agreement.

9. Two of the exceptions to national treatment under the provisions of the pre-existing international conventions referred to are conditional on notification obligations; these are the exceptions provided in Article 6 of the Berne Convention 1971 and Article 16(1)(b) of the Rome Convention. Article 3.1 of the TRIPS Agreement requires that any Member availing itself of these possibilities in respect of its TRIPS national treatment obligations shall make the notifications in question to the TRIPS Council.

(a) ~~Possibility of restricting protection of works made by nationals of non-WTO Members~~

[12]If a phonogram was first published in a non-WTO Member but it was also published, within thirty days of its first publication, in a WTO Member (simultaneous publication), it shall be considered, in accordance with the provisions of Article 5(2) of the Rome Convention, as first published in the WTO Member.

10. In accordance with the criteria contained in Article 3(1) of the Berne Convention, as incorporated into the TRIPS Agreement by its Articles 1.3 and 9.1, WTO Members are obliged to grant protection, including national treatment, to authors who are not nationals[13] of a WTO Member for their works first published in a WTO Member (criterion of publication).[14] This rule could give rise to the situation whereby a national of a non-WTO country which does not protect in an adequate manner the works of authors of WTO Members would nonetheless be eligible to benefit from TRIPS protection by first publishing his or her work in a WTO Member. This is the situation that is addressed, in relation to the Berne Convention, by Article 6(1) of the Berne Convention, which allows the protection of such persons to be restricted, including in respect of national treatment.[15] The restrictions permissible under Article 6(1) of the Berne Convention in respect of Berne member states are also permissible under the TRIPS Agreement in respect of WTO Members by virtue of the incorporation of this provision by reference in Article 9.1 of the TRIPS Agreement and its recognition, in relation to national treatment, in Article 3.1.

11. The permissible restrictions of the protection of such authors who are not nationals of WTO Members are of two types. First, where a national of a non-WTO Member who is notitually resident in a WTO Member first publishes a work in a WTO Member, the WTO Member of first publication may restrict the protection given to that work if the country of which the author in question is a national fails to protect in an adequate manner the works of its authors. The second type of restriction of protection, including in relation to national treatment, is that, if the Member of first publication restricts protection in the way described above, other Members may also do so; they are not required to grant to the work in question a wider protection than that granted to it in the Member of first publication.

12. In accordance with the provisions of Article 6(3) of the Berne Convention as incorporated into the TRIPS Agreement and as reaffirmed in Article 3.1 of the TRIPS Agreement, a WTO Member which restricts protection in these ways is obliged to make a notification to the Council for TRIPS.

13. These possible restrictions on the protection of works created by nationals of non-Member states appear to have been very little used under the Berne Convention. According to the information provided by the International Bureau of the WIPO (depositary of the 1967 and 1971 Acts of the Berne Convention) and the Swiss Government (depositary of previous Acts of the Berne Convention), no use of Article 6 has been notified under the Berne Convention itself. One notification was made earlier, when this provision formed part of the 1914 protocol to the Berne Convention, but this notification is no longer applicable.

(b) ~~Communication to the public of television broadcasts~~

---

[13] Authors who are not nationals of one of the WTO Members but who have their habitual residence in one of them, are assimilated to nationals of that Member in accordance with Article 3(2) of the Berne Convention.

[14] Works first published in a non-WTO Member which were also published, within thirty days of their first publication, in a WTO Member (simultaneous publication) also benefit from the protection in accordance with paragraphs (1)(b) and (4) of Article 3 of the Berne Convention.

[15] In accordance with Article 6(2) of the Berne Convention, no such restrictions shall affect the rights which an author may have acquired in respect of a work published in a WTO Member before such restrictions were put into force.

14. According to Article 14.3 of the TRIPS Agreement, broadcasting organizations shall have the right to prohibit the communication to the public of their television broadcasts when undertaken without their authorization. On the basis of Article 14.6, any WTO Member may limit this right to the extent permitted by the Rome Convention.

15. According to Article 13(d) of the Rome Convention, broadcasting organizations shall enjoy the right to authorize or prohibit the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; it shall be a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised. However, a State may, according to Article 16(1)(b), in a notification deposited with the Secretary-General of the United Nations, declare that it will not apply Article 13(d). Such a notification also affects the scope of the national treatment obligation of other Contracting States: they are not obliged to provide similar protection to broadcasting organizations whose headquarters are in the State that has made the notification.

16. The incorporation of Article 16(1)(b) into the TRIPS Agreement by reference means that, if a Member of the WTO does not wish to grant this right to the broadcasting organizations of other WTO Members, it may make a notification to that effect. The notification has to be made, according to Article 3.1, to the TRIPS Council. In such a case, other Members are not obliged to grant this right to broadcasting organizations whose headquarters are in that Member, thus being authorized to derogate from the normal national treatment rule.

III. Timing and relationship between various notifications

(a) Timing of notifications

17. Notifications under Articles 5(3), 6(2) and 16(1)(b) of the Rome Convention may be deposited at the time of ratification, acceptance or accession, or any time thereafter; in the last case, they shall become effective six months after they have been deposited. A Member of the WTO wishing to avail itself of these possibilities under the TRIPS Agreement may similarly make such notifications to the TRIPS Council at the time of ratification, acceptance or accession, or any time later. In the first case, the notification comes effective from the beginning of the membership, in the last case six months after the notification has been deposited.

18. The notifications in question are relevant to a Member's national treatment and most-favoured-nation treatment obligations, either directly so or because they affect the persons of other Members eligible for national and m.f.n. treatment. The TRIPS obligations relating to national and most-favoured-nation treatment (Articles 3, 4 and 5) become effective for all WTO Members as of 1 January 1996. If a Member wishes to have such notifications effective by this time, it should make the necessary notifications to the TRIPS Council before 1 July 1995. However, it may make notifications even at a later stage. In that case they become effective six months later. A country may also choose to make notifications at the time of ratification, acceptance or accession.

19. Whereas most WTO Members already provide some protection for phonogram producers and are therefore subject to the national and m.f.n. treatment obligations in this respect as of 1 January 1996, some Members may not yet have any particular form of protection for broadcasting organizations. The question of granting national and m.f.n. treatment, and therefore the issue of whether to make a notification in respect of rules stemming from Article 6(2) and Article 16(1)(b) of the Rome Convention as incorporated into

the TRIPS Agreement, would not arise until any such time as substantive protection of broadcasting organizations is introduced.

20. A Member of the WTO wishing to avail itself of the possibility stemming from the incorporation of the provisions of Article 6(3) of the Berne Convention into the TRIPS Agreement may make a notification to the TRIPS Council at any time.

(b) ~~Relationship between various notifications~~

21. Notifications already made under Articles 5(3), 6(2) and 16(1)(b) of the Rome Convention apply between its Contracting States in relation to their obligations under that Convention. Such notifications have no automatic status under the TRIPS Agreement, which is part of a separate international treaty - the WTO Agreement. On the other hand, possible notifications to be made under Articles 1.3 and 3.1 of the TRIPS Agreement relating to phonogram producers or broadcasting organizations will apply between the Members of the WTO in relation to their obligations under the TRIPS Agreement and will not affect the existing obligations between the Contracting States of the Rome Convention. The same principles apply to any notifications relating to Article 6 of the Berne Convention.

22. The texts of the relevant provisions of the TRIPS Agreement, Berne Convention and Rome Convention are reproduced in the Annex.

ANNEX

Agreement on Trade-Related Aspects of Intellectual Property Rights

Article 1

Nature and Scope of Obligations

...

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.[16] In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.[17] Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

[16]When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

[17]In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection[18] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

...

Berne Convention

Article 6

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as "the Director General") by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

Rome Convention

Article 5

[18] For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

1. Each Contracting State shall grant national treatment to producers of phonograms if any of the following conditions is met:

(a) the producer of the phonogram is a national of another Contracting State (criterion of nationality);

(b) the first fixation of the sound was made in another Contracting State (criterion of fixation);

(c) the phonogram was first published in another Contracting State (criterion of publication).

2. If a phonogram was first published in a non-contracting State but if it was also published, within thirty days of its first publication, in a Contracting State (simultaneous publication), it shall be considered as first published in the Contracting State.

3. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Article 6

1. Each Contracting State shall grant national treatment to broadcasting organisations if either of the following conditions is met:

(a) the headquarters of the broadcasting organisation is situated in another Contracting State;

(b) the broadcast was transmitted from a transmitter situated in another Contracting State.

2. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organisation is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Article 16(1)*(b)* and (2)

1. Any State, upon becoming party to this Convention, shall be bound by all the obligations and shall enjoy all the benefits thereof. However, a State may at any time, in a notification deposited with the Secretary-General of the United Nations, declare that:

...

(b) as regards Article 13, it will not apply item *(d)* of that Article; if a Contracting

State makes such a declaration, the other Contracting States shall not be obliged to grant the right referred to in Article 13, item *(d)*, to broadcasting organisations whose headquarters are in that State.

2. If the notification referred to in paragraph 1 of this Article is made after the date of the deposit of the instrument of ratification, acceptance or accession, the declaration will become effective six months after it has been deposited.

RESTRICTED

WORLD TRADE ORGANIZATION

IP/C/W/8

28 July 1995

(95-2202)

Council for Trade-Related Aspects of Intellectual Property Rights

DRAFT FORMAT FOR LISTING OF "OTHER LAWS AND REGULATIONS" TO BE NOTIFIED UNDER ARTICLE 63.2

Note by the Secretariat

1. Paragraph 10 of the Working Hypothesis on Procedures for Notification of, and Possible Establishment of a Common Register of, National Laws and Regulations under Article 63.2 (IP/C/W/6) provides that each Member shall provide in a WTO language a listing of its "other laws and regulations" together with a brief description of the relevance of each law and regulation to provisions of the TRIPS Agreement. At the meeting of the Council for TRIPS on 24 May 1995, the Chairman said that a fairly simple two-column type of presentation, with the type of law or regulation in question in one column and a brief description of the subject of the law or regulation and of its relevance to the TRIPS Agreement in the other column, might be envisaged (IP/C/M/2, paragraph 14). The Council agreed to his suggestion that the Secretariat be requested to prepare a draft format (IP/C/M/2, paragraphs 34 and 35). The purpose of this note is to respond to this request.

2. It will be recalled that, in the light of the volume of legislation to be notified pursuant to Article 63.2 of the TRIPS Agreement, the Working Hypothesis departs from customary GATT/WTO practice of requiring that notifications of national legislation be in a GATT/WTO language and be circulated to all Members in the three working languages of the GATT/WTO. A distinction is made between the "main dedicated intellectual property laws and regulations" and "other laws and regulations". Legislation falling in the first category would have to be notified in a WTO language and would be distributed in that language to all Members as TRIPS Council documents. Translations into other WTO languages would only be made by the WTO Secretariat on the request of a Member in the TRIPS Council and within the limits of the WTO Secretariat's resources. Notifications of the "other laws and regulations" could be made in a national language, even where that was different from a WTO language, and would not be circulated automatically to the Members, but would be available for consultation by Members in the Secretariat. Copies would be distributed to Members as Council documents only if a request were made in the TRIPS Council.

3. Given, therefore, that these "other laws and regulations" would not normally be distributed to Members in a WTO language, the Working Hypothesis provides that each Member shall provide in a WTO language a listing of these "other laws and regulations", together with a brief description of the relevance of each law and regulation to the provisions of the TRIPS Agreement.

4. A draft format for such listings, along the lines suggested by the Chairman at the TRIPS Council's meeting of 24 May 1995, can be found at Annex 1. Annex 2 contains some hypothetical examples of the information that might be provided in such a listing, in order to give Members a more concrete appreciation of what might be involved. The remaining

paragraphs of this note consider a number of issues relevant to the information that should appear in a Member's listing.

~~What are the "other laws and regulations" that would figure on the listing~~?

5. Article 63. 2 of the TRIPS Agreement requires the notification of laws and regulations made effective by a Member pertaining to the subject matter of the TRIPS Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights). It is clear from Article 63, paragraphs 1 and 2, that the notification obligation does not extend to final judicial decisions and administrative rulings of general application. The "other laws and regulations" that would figure on the listing are those laws and regulations to be notified under Article 63.2 minus the "main dedicated laws and regulations". Therefore, in order to establish what are these "other laws and regulations", it is necessary to define what are the "main dedicated intellectual property laws and regulations".

6. In the Working Hypothesis, it is stated that these main dedicated intellectual property laws and regulations would include the main laws and regulations on the availability, scope and acquisition of each of the categories of intellectual property together with such other main laws and regulations as are dedicated to intellectual property, such as those on border enforcement. Thus, the basic law applicable to each area of intellectual property would no doubt fall within this category. On the whole, secondary legislation, laying out more detailed provisions for the implementation of the basic law, especially those of an essentially procedural nature, could be supposed generally not to fall within this category but to figure on the listing of "other laws and regulations". However, there may be some regulations which are so closely related to the obligations of the TRIPS Agreement that they should be treated as "main dedicated intellectual property laws and regulations"; examples might include regulations specifying the protection of foreign nationals and detailed provisions on compulsory licensing giving effect to TRIPS provisions. In regard to enforcement, some provisions, especially those relating to remedies, often fall in laws and regulations dedicated to the intellectual property right in question. These would thus normally be notified as part of the "main dedicated laws and regulations". There may also be, in some countries, laws or regulations of a more horizontal nature, but which nonetheless deal specifically with intellectual property enforcement and are sufficiently important to the TRIPS Agreement to be considered as a main law or regulation; examples might include provisions establishing a court to deal specifically with intellectual property matters or provisions on the customs enforcement of intellectual property rights. The situation in respect of legislation on prevention of the abuse of intellectual property rights is likely to be similar to that for enforcement.

7. The "other laws and regulations" would include all laws, however important in relation to the provisions of the TRIPS Agreement, which are not dedicated (i.e. specific) to intellectual property but of more general application. Much legislation in regard to procedures for domestic enforcement, e.g. the codes of civil and criminal procedures, and much legislation with regard to the prevention of abusive practices, e.g. competition or anti-trust laws, are likely to fall in this category. As indicated in the third sentence of the previous paragraph, this category of "other laws and regulations" would also include those laws and regulations which, although dedicated to intellectual property, are not main laws and regulations.

8. Of course, it will inevitably be somewhat arbitrary what, at the margin, is put in one category or the other. This is a judgment that will have to be made in the first instance by each Member when deciding how to notify. If, however, another Member considers that a text subjected to the simplified procedure of the listing should have been treated as a "main dedicated law or regulation", the Working Hypothesis contains mechanisms for dealing with

the situation. That other Member can request the notification of the law or regulation, or relevant parts of it, in a WTO language and its circulation to Members of the TRIPS Council. It should also be recalled that, in the area of enforcement where laws are less likely to be "dedicated" and therefore more likely to figure on the listing, the Working Hypothesis provides for a checklist of issues.

Treatment of consolidated texts

9. The question might arise as to whether consolidated texts of laws and regulations should be notified, even where they do not have legal standing in the country in question. It is suggested that, in the initial notification of laws and regulations, to be made as of the time that the corresponding substantive obligations under the TRIPS Agreement become applicable, Members should be encouraged to submit any consolidated texts that exist, both of the main dedicated laws and regulations and of the others, wherever the Member is satisfied that they accurately represent the state of its legislation. This does not mean that delegations would be invited to prepare consolidations specifically for the purposes of their TRIPS notifications, although of course they would be free to do so if they so wished; rather it is suggested that they should use any existing consolidated texts and notify them together with any amendments subsequent to their preparation.

10. In regard to notifications of legislation subsequent to the initial notification, other Members may well find the notification of amendments useful, since they would enable Members to see easily the change that has been made. The Council may therefore wish to suggest that, in regard to such subsequent changes to national legislation, the amendments be notified, Members might also be invited to provide copies of consolidated texts, whether of an official or unofficial nature, when and if they prepare them.

Structure of listing

11. The listings might be structured along the lines of the categorization in the TRIPS Agreement itself, i.e.

Copyright and related rights
Trademarks
Geographical indications
Industrial designs
Patents (including plant variety protection)
Layout-designs (topographies) of integrated circuits
Protection of undisclosed information

Prevention of the abuse of intellectual property rights

Civil judicial procedures and remedies
Provisional judicial measures
Special requirements related to border measures
Criminal procedures
Any administrative procedures and remedies not covered above

Where a law or regulation is relevant to more than one heading, it would need to be mentioned under each of the relevant headings.

ANNEX 1

DRAFT FORMAT FOR LISTING OF "OTHER LAWS AND REGULATIONS"

TITLE DATE OF ADOPTION AND ENTRY INTO FORCE	BRIEF DESCRIPTION
Copyright and related rights	
Trademarks	
Geographical indications	
etc. *(see headings in paragraph 11 of cover note)*	

ANNEX 2

HYPOTHETICAL ILLUSTRATIVE EXAMPLES OF INFORMATION TO BE PROVIDED UNDER FORMAT

TITLE DATE OF ADOPTION AND ENTRY INTO FORCE	BRIEF DESCRIPTION
Copyright and related rights	
Copyright Regulation No. ... of 19.., adopted ..., entry into force ...	The Regulation contains provisions on detailed application of the provisions of the Copyright Act No. ... of 19... relating to the calculation of *droit de suite* remuneration, ephemeral recordings for broadcasting purposes and the procedures of the Copyright Tribunal as well as certain miscellaneous provisions
Regulation No. ... of 19.., adopted ..., entry into force ...	The Regulation amends the provisions of the Copyright Regulation No. ... of 19... relating to the calculation of *droit de suite* remuneration
Patents	
Patent Regulation No. ... of 19.., adopted ..., entry into force ...	The Regulation contains provisions on detailed application of the provisions of the Patent Act No. ... of 19... relating to patent applications
Regulation No. ... of 19.., adopted ..., entry into force ...	The Regulation amends Patent Regulation No. ... of 19.. by adding necessary provisions giving effect to the procedural requirements flowing from the adherence to the Patent Cooperation Treaty
Regulation on the Patent Office No. ... of 19.., adopted ...., entry into force ...	The Regulation contains detailed provisions on the organization of the Patent Office
Regulation on Patent Fees No. ... of 19.., adopted ..., entry into force ...	The Regulation establishes the patent fees
Prevention of the abuse of intellectual property rights	

TITLE DATE OF ADOPTION AND ENTRY INTO FORCE	BRIEF DESCRIPTION
Restrictive Trade Practices Act No. ... of 19.., adopted ..., entry into force ...	The Act makes actionable, in certain situations, certain licensing practices and conditions which restrain competition. The relevant provisions may in particular cases be applied to an abuse of intellectual property rights
~~Civil judicial procedures and remedies~~	
Act on Civil Procedures No. ... 19.., adopted ..., entry into force ...	The Act, together with the subsequent amendments, establishes the basic procedures for civil judicial proceedings
Act on Liability No. ... of 19.., adopted .., entry into force ...	The Act contains provisions on the calculation of damages
~~Provisional judicial measures~~	
Act on Provisional Measures No. ... of 19.., adopted ..., entry into force ...	The Act contains provisions on certain provisional measures applicable to civil and/or criminal procedures
~~Criminal procedures~~	
Act on Criminal Procedures No. ... of 19.., adopted ..., entry into force ...	The Act together with the subsequent amendments establishes the basic procedures for criminal proceedings

RESTRICTED

WORLD TRADE ORGANIZATION

IP/C/W/15

20 November 1995

(95-3607)

Council for Trade-Related Aspects of Intellectual Property Rights

NOTIFICATION PROVISIONS OF INTELLECTUAL PROPERTY CONVENTIONS INCORPORATED BY REFERENCE INTO THE TRIPS AGREEMENT BUT NOT EXPLICITLY REFERRED TO IN IT

Background Note by the Secretariat

1. At its meeting of 21 September 1995, the TRIPS Council, discussing those notification requirements under the provisions of the Berne Convention and the Rome Convention that were incorporated by reference into the TRIPS Agreement but not explicitly referred to in it and which had been listed in paragraphs 7 to 9 of document PC/IPL/7/Add.1, requested the Secretariat to prepare a background document setting out, first, the nature of the various notification provisions in question; second, the information that the Secretariat would be able to obtain, with the assistance of WIPO and the United Nations Legal Office, on the notifications that had already been made under the relevant provisions of the Berne Convention and the Rome Convention by TRIPS Members; and third, taking into account the way the TRIPS Agreement had handled other notification provisions, come forward with options for how the TRIPS Council might give effect also to these requirements. The purpose of this note is to respond to this request.

2. Annex 1 to this note contains the notifications already made pursuant to the relevant provisions of the Berne Convention and the Rome Convention and which are currently effective. The part of the Annex relating to the Berne Convention is prepared on the basis of a list of the notifications issued in respect of the relevant provisions of the Berne Convention and the Appendix thereto provided on 17 October 1995 by the International Bureau of the WIPO, whose Director General is the depositary of the Stockholm Act (1967) and the Paris Act (1971) of the Berne Convention. The part of the Annex relating to the Rome Convention is prepared on the basis of a list of States parties to the Rome Convention and the corresponding texts of reservations and declarations that was provided on 29 March 1995 by the Treaty Section of the Office of Legal Affairs of the United Nations, whose Secretary-General is the depositary of the Convention. The depositary notifications are drafted by both organizations in English and French only. The complete listings and other information provided by WIPO and the United Nations are available in the WTO Secretariat for consultation by interested delegations.

3. The texts of the relevant provisions of the Berne Convention and the Rome Convention are reproduced in Annex 2.

I Nature of the notification provisions

(a) The Berne Convention

4. Article 9.1 of the TRIPS Agreement requires Members to comply with Articles 14*bis*(2)(c) and 14*bis*(3) and Article 15(4) of the Berne Convention and the Appendix thereto. The nature of the notification provisions contained in these Articles and the relevant

Articles of the Appendix is discussed below.

5. Articles 14*bis*(2)(c) and 14*bis*(3) of the Berne Convention: Article 14*bis*(2)(b) of the Berne Convention as incorporated into the TRIPS Agreement applies to a WTO Member which in its legislation includes among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work. In such a Member it must be presumed that these authors have consented, in the absence of any contract to the contrary, to certain ways in which the film may be exploited. If such Member's legislation requires that the consent of the authors must have been in writing, Article 14*bis*(2)(c) requires that Member to inform other Members of this requirement by means of a notification. Article 14*bis*(3) requires that a Member the law of which does not make the presumption binding on the principal director of the film must similarly make a notification. The purpose of these notification requirements is to allow those concerned to know the Members the legislation of which applies the presumption in such a restricted way and to make their arrangements accordingly.

6. Under the Berne Convention one country has made a notification as foreseen in Article 14*bis*(2)(c) and one country as foreseen in Article 14*bis*(3) of the Berne Convention. For the text of these notifications, see Annex 1.

7. Article 15(4) of the Berne Convention: Article 15(4) of the Berne Convention as incorporated into the TRIPS Agreement is mainly directed at the protection of folklore. It deals with unpublished works where the identity of the author is unknown, but where there is every ground to presume that he or she is a national of a given WTO Member. In such a situation the Member concerned may designate a competent authority to protect the interests of the author. Other Members should be informed about this authority by means of a notification giving full information.

8. Under the Berne Convention one country has made a notification as foreseen in Article 15(4) of the Berne Convention. For the text of this notification, see Annex 1.

9. Appendix to the Berne Convention: Article 9.1 of the TRIPS Agreement requires Members to comply with the Appendix to the Berne Convention (1971), which contains special provisions for developing countries. The Appendix contains a number of notification procedures which are discussed below.

(a) Article I of the Appendix: Paragraph 1 requires a developing country Member wishing to avail itself of the possibilities provided in the Appendix to declare that it will avail itself of the faculty provided in Article II and/or Article III of the Appendix (compulsory licenses for, respectively, translations and reproductions) by means of a notification. According to paragraph 2 such declarations can be made for renewable periods of ten years. Such declarations may be renewed by means of a notification. Paragraph 5 deals with the possibility for a country to make notifications in respect of territories for which it has international responsibility.

(b) Article II(3)(b) of the Appendix: This provision deals with the situation where a developing country Member secures the agreement of all developed Members, in which the same language is in general use as in that developing country Member, to provide for a shorter period than the usual three years after publication for the application of compulsory licences to substitute for the exclusive right of translation. The provision requires that any such agreement shall be notified.

(c) Article IV(2) of the Appendix : This provision deals with the situation where an applicant for a compulsory licence of the types provided for in Articles II and III cannot

find the owner of the right in question. In such a situation, he or she must send a copy of the application to any national or international information centre which may have been designated by the Member in which the publisher of the work concerned is believed to have his principal place of business. The paragraph provides that such information centres must have been designated in a notification by the Member concerned.

(d) Article IV(4)(c)(iv) of the Appendix: This provision allows developing country Members to export copies of translations made under compulsory licence, provided that a number of conditions are met: the language of the translation must not be English, French or Spanish; the recipients are individuals who are nationals of the Member whose competent authority has granted the license, or organizations grouping such individuals; the copies must be sent for teaching, scholarship or research purposes; there must be no commercial purpose; and there must be an agreement between the Member granting the licence and that to which the copies are sent. The provision requires that such an agreement shall be notified by the Member in which the license has been granted.

(e) Article V of the Appendix: This Article provides that a developing country Member may choose, by way of a declaration made at the time of ratification or accession, the "ten-year rŭgime" which appeared in the 1896 Act of the Berne Convention for translations instead of the compulsory licensing system provided for in Article II of the Appendix.

10. Under the Berne Convention one notification made under Article I of the Appendix is currently effective. For the text of this notification, see Annex 1.

(b) The Rome Convention

11. Article 17 of the Rome Convention: Article 14.6 of the TRIPS Agreement allows a WTO Member to avail itself of exceptions permitted under the Rome Convention. Article 17 of the Rome Convention allows a state which, on 26 October 1961 granted protection to producers of phonograms solely on the basis of the criterion of fixation to continue to do so, provided it makes a notification to this effect at the time of ratification, acceptance or accession.

12. Under the Rome Convention four countries have made a notification as foreseen in Article 17. For the text of these notifications, see Annex 1.[19]

13. Article 18 of the Rome Convention: Articles 1.3, 3.1 and 14.6 of the TRIPS Agreement relate to certain exceptions under the Rome Convention the invocation of which require notification. Article 18 of the Rome Convention provides that any state which has invoked such an exception by means of notifications under Articles 5(3), 6(2), 16(1) or 17 of the Rome Convention may, by a further notification, reduce the scope of or withdraw the notification in question.

14. Under the Rome Convention certain countries have reduced in scope or withdrawn some of their earlier notifications under Articles 5(3), 6(2), 16(1) or 17 by means of a further notification under Article 18. Annex to document IP/C/W/3 and Annex 1 to this document

[19] Three of these countries have conveyed information to the Council for TRIPS regarding the use they have made of Article 17 of the Rome Convention (see documents IP/N/2/DNK/1, IP/N/2/FIN/1 and IP/N/2/ITA/2).

contain the notifications already made under Articles 5(3), 6(2), 16(1)(b) and 17 as subsequently modified by such further notifications. Notifications under Article 18 of the Rome Convention have not been listed separately in Annex 1.

II Notification procedures

(a) Procedures

15. The Council has already dealt with notification procedures under certain provisions of the Berne and Rome Conventions incorporated into the TRIPS Agreement by reference similar to the provisions discussed in this Note, when it took the decision concerning notifications under Articles 1.3 and 3.1 of the TRIPS Agreement (paragraphs 11 and 12 of document IP/C/M/2). If the Council wishes to handle questions relating to notifications addressed in this Note in the same way, it would invite Members wishing to make such notifications to make them to the Council for TRIPS, even if the Member in question had already made a notification under the Berne or Rome Convention in regard to the same issue.

(b) Timing of notifications

16. Articles 14*bis*(2)(c) and 14*bis*(3) of the Berne Convention: Under Articles 14*bis*(2)(c) and 14*bis*(3) of the Berne Convention as incorporated into the TRIPS Agreement Members are required to make a notification in situations described in paragraph 5 above. Developed country Members, to which the notification obligations stemming from the incorporation of the provisions of these Articles into the TRIPS Agreement apply, should make necessary notifications as of 1 January 1996 and other Members as of the relevant date of application of Article 9.1 of the TRIPS Agreement for the Member in question. If a Member subsequently changes its legislation in a way that would require notification under these provisions, it should notify as of the time of the change.

17. Article 15(4) of the Berne Convention: The purpose of Article 15(4) of the Berne Convention is to facilitate benefitting from the protection available in other WTO Members. Therefore, it would be in the interest of a Member wishing to avail itself of the possibility stemming from the incorporation of the provisions of Article 15(4) of the Berne Convention into the TRIPS Agreement in relation to other WTO Members to notify the authority designated without delay, while being free to do so at any time.

18. The Appendix to the Berne Convention: Notification under Article I(1) of the Appendix may be deposited at the time of depositing the instrument of ratification or accession, or any time thereafter.

19. As far as the calculation of renewable periods of ten years is concerned (Article I(2) of the Appendix), this is a question that the Council would need to look into if any Member were to invoke any of the provisions of the Appendix as incorporated into the TRIPS Agreement. It would not seem necessary for the Council to come to a view on the matter at this point.

20. Other notifications stemming from the incorporation of the provisions of the Appendix into the TRIPS Agreement can be made at any time. The only exception in this regard is Article V(1) as incorporated into the TRIPS Agreement which requires that the choice provided in that paragraph has to be made at the time of ratification or accession.

21. Articles 17 and 18 of the Rome Convention: A notification under Article 17 of the Rome Convention has to be made at the time of ratification, acceptance or accession. A further notification under Article 18 of the Rome Convention as incorporated into the TRIPS

Agreement can be made at any time.

ANNEX 1

NOTIFICATIONS MADE UNDER THE NOTIFICATION PROVISIONS OF THE BERNE CONVENTION AND ROME CONVENTION INCORPORATED BY REFERENCE INTO THE TRIPS AGREEMENT BUT NOT EXPLICITLY REFERRED TO IN IT

Berne Convention

Article 14*bis*(2)(c)

PORTUGAL

The Director General of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and, has the honor to inform him of the receipt, on November 5, 1986, of a declaration, dated November 3, 1986, of the Government of the Portuguese Republic, made pursuant to the provisions of paragraph 2(c) of Article 14*bis* of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971 ("Paris Act (1971)") to the effect that the undertaking by authors to bring contributions to the making of a cinematographic work must be in a written agreement.

Article 14*bis*(3)

INDIA

The Director General of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and has the honor to notify him that the Government of the Republic of India, referring to its ratification, with effect from January 10, 1975, of the Berne Convention for the Protection of Literary and Artistic Works of December 9, 1886, as revised at Paris on July 24 1971 ("Paris Act (1971)"), with the declaration that its ratification thereof does not apply to Articles 1 to 21 and the Appendix of the Paris Act (1971) (see BERNE Notification No. 59), deposited, on February 1, 1984, a declaration extending the effects of its ratification to the said Articles and the Appendix, subject to the following declarations:

1. With reference to Article 14*bis* of the Convention, the Government of India declares, in accordance with paragraph 3 of the said Article, that this ratification shall not apply to the provisions of Article 14*bis*, paragraph 2(b) thereof;

...

Article 15(4)

INDIA

The Director General of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and has the honor to notify him that the Government of the Republic of India, referring to its ratification, with effect from January 10, 1975, of the Berne Convention for the Protection of Literary and Artistic Works of December 9, 1886, as revised at Paris on July 24 1971 ("Paris Act (1971)"), with the declaration that its ratification thereof does not apply to Articles 1 to 21 and the Appendix of the Paris Act

(1971) (see BERNE Notification No. 59), deposited, on February 1, 1984, a declaration extending the effects of its ratification to the said Articles and the Appendix, subject to the following declarations:

...

2. The Government of India declares and designates the Registrar of the Copyrights of India as a competent authority in terms of Article 15, paragraph 4(a) of the Convention;

...

~~Article I of the Appendix~~

THAILAND

The Director General of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and has the honor to refer to the deposit by the Government of the Kingdom of Thailand, on September 29, 1980, of its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971 ("Paris Act (1971)"), and amended on September 28, 1979, which deposit was accompanied by a declaration that its accession did not apply to Articles 1 to 21 and the Appendix of the Paris Act (1971) (see BERNE Notification No. 101).

The Director General of WIPO has the honor to notify that the Government of the Kingdom of Thailand deposited, on May 23, 1995, a declaration extending the effects of the said accession to Articles 1 to 21 of the Paris Act (1971) and a notification declaring that the Government of the Kingdom of Thailand avails itself of the faculty provided for in Article II (Limitations on the Right of Translation) of the Appendix of the Paris Act (1971).

Articles 1 to 21 of the Paris Act (1971) will enter into force, with respect to the Kingdom of Thailand, on September 2, 1995.

As far as the relevant provisions of the Appendix are concerned, the said notification will be effective from September 2, 1995, to October 10, 2004, unless it is withdrawn earlier (see Article 1(2)(b) and (3) of the Appendix of the Paris Act (1971)).

~~Rome Convention~~

~~Article 17~~

DENMARK

...

4) *With regard to article 17:* Denmark will grant the protection provided for in article 5 only if the first fixation of the sound was made in another Contracting State (the criterion of fixation) and will apply for the purposes of paragraph 1 (a) (iii) and (iv) of article 16 the said criterion instead of the criterion of nationality.

FINLAND

...

6. *Article 17.* Finland will apply, for the purposes of article 5, the criterion of fixation alone and, for the purposes of article 16, paragraph 1 (a) (iv), the criterion of fixation instead of the criterion of nationality."

ITALY

...

(4) With regard to article 5 and in accordance with article 17 of the Convention, Italy will apply only the criterion of fixation for the purposes of article 5; the same criterion, instead of the criterion of nationality, will be applied for the purposes of the declarations provided for in article 16, paragraph I (a) (iii) and (iv), of the Convention.

SWEDEN

Notifications deposited with the instrument of ratification:

...

(e) With regard to article 17.

Withdrawal or amendment of the notifications deposited with the instrument of ratification:

With application of article 18 of the Convention, a notification notifying its withdrawal or amendment of the notifications deposited with the instrument of ratification on July 13, 1962, as follows:

...

3. The notification relating to article 17 is withdrawn in so far as reproduction of phonograms is concerned. Sweden will from July 1, 1986, grant protection according to article 10 of the Convention to all phonograms.

...

ANNEX 2

NOTIFICATION PROVISIONS OF THE BERNE CONVENTION AND THE ROME CONVENTION INCORPORATED BY REFERENCE INTO THE TRIPS AGREEMENT, BUT NOT EXPLICITLY REFERRED TO IN IT

Berne Convention

Article 14*bis*

(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2)*(a)* Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

(c) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph *(b)*, be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall **notify** the Director General by means of a **written declaration**, which will be immediately communicated by him to all the other countries of the Union.

(d) By "contrary or special stipulation" is meant any restrictive condition which is relevant to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)*(b)* above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)*(b)* to such director shall **notify** the Director General by means of a **written declaration**, which will be immediately communicated by him to all the other countries of the Union.

~~Article 15(4)~~

(4)*(a)* In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

(b) Countries of the Union which make such designation under the terms of this provision shall **notify** the Director General by means of a **written declaration** giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

~~Article I(1), (2), (5) of the Appendix~~

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a **notification** deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)*(c)*, at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)*(a)*.

(2)*(a)* Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a **notification** deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running.

(b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such **declaration** may be renewed as provided for in the second sentence of subparagraph *(a)*.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the **declaration** referred to in paragraph (1) and the **notification** of renewal referred to in paragraph (2). As long as such **declaration or notification** remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

~~Article II(3)*(b)* of the Appendix~~

(3)*(b)* Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is

in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)*(a)* a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be **notified** of any such agreement by the Governments which have concluded it.

~~Article IV(2) of the Appendix~~

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any national or international information center which may have been designated, in a **notification** to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

~~Article IV(4)(*c*)(iv) of the Appendix~~

(*c*) Where a government or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (*a*), be considered to constitute export if all of the following conditions are met:

(*iv*) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been **notified** of the agreement by the Government of the country in which the license has been granted.

~~Article V of the Appendix~~

(1)*(a)* Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act:

(i) if it is a country to which Article 30(2)*(a)* applies, make a **declaration** under that provision as far as the right of translation is concerned;

(ii) if it is a country to which Article 30(2)*(a)* does not apply, and even if it is not a country outside the Union, make a **declaration** as provided for in Article 30(2)*(b)*, first sentence.

(b) In the case of a country which ceases to be regarded as a developing country as referred to in Article I(1), a declaration made according to this paragraph shall be effective

until the date on which the period applicable under Article I(3) expires.

(c) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

(2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).

(3) Any country which has ceased to be regarded as a developing country as referred to in Article I(1) may, not later than two years prior to the expiration of the period applicable under Article I(3), make a **declaration** to the effect provided for in Article 30(2)*(b)*, first sentence, notwithstanding the fact that it is not a country outside the Union. Such **declaration** shall take effect at the date on which the period applicable under Article I(3) expires.

[~~Article 30(2)~~*(b)*

(b) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country. Subject to Article I(6)*(b)* of the Appendix, any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.]

~~Rome Convention~~

~~Article 17~~

Any State which, on October 26, 1961, grants protection to producers of phonograms solely on the basis of the criterion of fixation may, by a **notification** deposited with the Secretary-General of the United Nations at the time of ratification, acceptance or accession, declare that it will apply, for the purposes of Article 5, the criterion of fixation alone and, for the purposes of paragraph 1*(a)*(iii) and (iv) of Article 16, the criterion of fixation instead of the criterion of nationality.

~~Article 18~~

Any State which has deposited a **notification** under paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 or Article 17, may, by a further notification deposited with the Secretary-General of the United Nations, reduce its scope or withdraw it.

RESTRICTED

IP/C/W/20

2 February 1996

(96-0404)

WORLD TRADE ORGANIZATION

Council for Trade-Related Aspects of Intellectual Property Rights

DISTRIBUTION OF NOTIFICATIONS OF LAWS AND REGULATIONS UNDER ARTICLE 63.2 (IP/N/1/- SERIES OF DOCUMENTS)

Note by the Secretariat

Given the volume of the documents to be distributed in the IP/N/1- series, containing notifications of laws and regulations under Article 63.2 of the TRIPS Agreement, the number of copies distributed will be limited to a maximum of five per delegation. All five copies will be sent to the address provided by each delegation that is closest to the WTO. This conforms with the practice employed in respect of other voluminous series of documents.

The documentation of main dedicated intellectual property laws and regulations will be arranged in the following sub-series:

IP/N/1/-/C/-	Copyright and Related Rights
IP/N/1/-/T/-	Trademarks
IP/N/1/-/G/-	Geographical Indications
IP/N/1/-/D/-	Industrial Designs
IP/N/1/-/P/-	Patents (Including Plant Variety Protection)
IP/N/1/-/L/-	Layout-Designs (Topographies) of Integrated Circuits
IP/N/1/-/U/-	Undisclosed Information
IP/N/1/-/I/-	Industrial Property (General)
IP/N/1/-/E/-	Enforcement
IP/N/1/-/O/-	Other

WTO/AIR/388 1 AUGUST 1996

SUBJECT: NOTIFICATION OF CONTACT POINTS FOR TECHNICAL COOPERATION ON TRIPS

23. AT ITS MEETING OF 22 TO 25 JULY 1996, THE COUNCIL FOR TRIPS AGREED TO INVITE EACH DEVELOPED COUNTRY MEMBER TO NOTIFY A CONTACT POINT FOR TECHNICAL COOPERATION ON TRIPS, AND THAT THIS WOULD BE DONE AT THE SAME TIME AS THEY UPDATE INFORMATION ON THEIR TECHNICAL COOPERATION ACTIVITIES RELEVANT TO THE IMPLEMENTATION OF THE TRIPS AGREEMENT. THE CHAIRMAN NOTED THAT SUCH CONTACT POINT (OR CONTACT POINTS) COULD BE THE SAME AS THE ONE THAT THE DEVELOPED COUNTRY MEMBER IN QUESTION HAS NOTIFIED UNDER ARTICLE 69 OF THE TRIPS AGREEMENT, OR IT COULD BE DIFFERENT, DEPENDING ON THE STRUCTURE OF THE ADMINISTRATION OF THAT MEMBER.

24. IN AIRGRAM WTO/AIR/375, IT WAS REQUESTED THAT WRITTEN CONTRIBUTIONS UPDATING INFORMATION OF TECHNICAL COOPERATION ACTIVITIES BE PROVIDED BY EACH DEVELOPED COUNTRY MEMBER BY 1 SEPTEMBER 1996.

25. ACCORDINGLY, THE PURPOSE OF THIS AIRGRAM IS TO REQUEST THAT CONTACT POINTS FOR TECHNICAL COOPERATION ON TRIPS BE NOTIFIED TOGETHER WITH THE CONTRIBUTIONS UPDATING INFORMATION ON TECHNICAL COOPERATION ACTIVITIES, AND THAT SUCH NOTIFICATIONS WOULD CONTAIN THE FOLLOWING INFORMATION:

(i) THE NAME OF THE AUTHORITY IN QUESTION;

(ii) ITS ADDRESS;

(iii) ITS TELEPHONE AND TELEFAX NUMBERS AND, WHERE APPROPRIATE, E-MAIL REFERENCE.

DEVELOPED COUNTRY MEMBERS ARE ALSO INVITED, WHERE APPROPRIATE, TO IDENTIFY AT EACH CONTACT POINT A CONTACT OFFICIAL.

RENATO RUGGIERO

96-3069

TRIPS-IV

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

EXAMPLES

"MOCK" EXAMPLE OF NOTIFICATION UNDER ARTICLE 1.3 OF THE AGREEMENT

"[COUNTRY], in accordance with Article 1.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, will not apply the criterion of fixation referred to in Article 5(1)(b) of the Rome Convention as regards the protection of producers of phonograms."

"MOCK" EXAMPLE OF NOTIFICATION UNDER ARTICLE 1.3 OF THE AGREEMENT

"In accordance with Article 1.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, [COUNTRY] avails itself of the possibility provided in Article 6.2 of the Rome Convention and, consequently, will protect broadcasts only if the headquarters of the broadcasting organization is situated in a WTO Member and the broadcast was transmitted from a transmitter situated in the same WTO Member."

"MOCK" EXAMPLE OF NOTIFICATION UNDER ARTICLE 3.1 OF THE AGREEMENT

"In accordance with Article 3.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, [COUNTRY] avails itself of the possibility referred to in Article 16(1)(b) of the Rome Convention and will, consequently, not apply the right referred to in Article 13(d) of that Convention."

"MOCK" EXAMPLE OF NOTIFICATION UNDER ARTICLE 4(d) OF THE AGREEMENT

"Pursuant to Article 4(d) of the TRIPS Agreement, [COUNTRY] hereby has the honour to notify to the Council for TRIPS the Agreement between [COUNTRY] and [TWO OTHER COUNTRIES], in particular Article [...] thereof. On the basis of the provisions of this Article, the Design Act and Regulations Concerning Registration of Industrial Designs of [COUNTRY], in particular Section 36 of the Regulations, exempt applicants for and owners of industrial designs domiciled in [THE TWO OTHER COUNTRIES] from the obligation to have a representative domiciled in [COUNTRY]."

"MOCK" EXAMPLE OF NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 63.2 OF THE AGREEMENT - RELATING TO THE PROVISIONS OF ARTICLES 70.8 AND 70.9

"The Permanent Mission of [COUNTRY] presents its compliments to the WTO Secretariat and has the honour to make the following notification pursuant to Article 63.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

With a view to meet [COUNTRY's] obligations under Articles 70.8 and 70.9 of the TRIPS Agreement, Law No. [...] was adopted on 13 December 1994, effective from 1 January 1995, amending certain provisions of the Patent Act.

On 30 December 1994, the National Directorate of Industrial Property issued a resolution pursuant to the above-mentioned Law, so as to be able to fulfill the obligations contained in Articles 70.8 and 70.9 of the TRIPS Agreement.

This measure was confirmed by a resolution of the Minister of Industry, who is the competent authority in matters relating to industrial property.

In accordance with these provisions, as from 1 January 1995, the National Directorate of Industrial Property receives applications for patents for pharmaceutical and agricultural chemical products in accordance with Article 70.8 of the TRIPS Agreement and, if the necessary conditions are met, has the authority to grant exclusive marketing rights in accordance with Article 70.9 of that Agreement.

The text of the amended law and of the regulations in force are attached."

"MOCK" EXAMPLE OF NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 63.2 OF THE AGREEMENT - RELATING TO ALL PROVISIONS OF THE AGREEMENT

"In accordance with Article 63.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the procedures laid down by the Council for TRIPS in November 1995, [COUNTRY] hereby notifies to the Council laws and regulations relating to the fields covered by the Agreement. The laws and regulations in question are listed in the annexes below. Following the agreed procedure, two copies of most of the texts referred to in the lists have been submitted. The remaining texts are notified with reference to the WIPO collections, in accordance with the Decision of the TRIPS Council reflected in document IP/C/2.

The main dedicated laws and regulations are submitted in their original language as well as in an unofficial English translation. "Other laws and regulations" are submitted in their original language and, to the extent that an English translation is available, such a translation is enclosed as well.

The main dedicated laws that entered into force on 1 January 1996 have been marked with an asterisk."

ANNEX I

NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 63.2 OF THE AGREEMENT

Main Dedicated Laws and Regulations

The Patents Act (1967:837)

- Act (1994:234) Amending the Patents Act (1967:837)

- Act (1994:1511) Amending the Patents Act (1967:837)

Act (1971:392) on the Protection of Plant Breeder's Rights

Act (1990:409) on the Protection of Trade Secrets

Act (1960:729) on Copyright in Literary and Artistic Works

- Act (1995:447) Amending the Act (1960:729) on Copyright in Literary and Artistic Works

- Act (1995:1273) Amending the Act (1960:729) on Copyright in Literary and Artistic Works

- Act (1995:1274) Amending the Act (1995:447) Amending the Act (1960:729) on Copyright in Literary and Artistic Works

Copyright Regulation (1993:1212)

International Copyright Regulation (1994:193)

- Regulation (1995:449) Amending the International Copyright Regulation (1994:193)

- Regulation (1995:1275) Amending the International Copyright Regulation (1994:193)

Act (1980:612) on Mediation in Certain Copyright Disputes

The Trademarks Act (1960:644)

- Act (1995:1277) Amending the Trademarks Act (1960:644)

- Act (1995:1278) Amending the Act (1994:1510) Amending the Trademarks Act (1960:644)

The Collective Marks Act (1960:645)

Trademarks Regulation (1960:648)

- Regulation (1995:1279) Amending the Trademark Regulation (1960:648)

Regulation (1970:495) on Foreign Trademarks, Etc.

- Regulation (1995:1299) Amending the Regulation (1970:495) on Foreign Trademarks, Etc.

Design Protection Act (1970:485)

Design Protection Regulation (1970:486)

Act (1992:1685) on the Protection of Topographies for Semiconductor Products

Regulation (1993:1434) on the Application in Relation to Other States of the Act (1992:1685) on the Protection of Topographies for Semiconductor Products

- Regulation (1995:1166) Amending the Regulation (1993:1434) on the Application in Relation to Other States of the Act (1992:1685) on the Protection of Topographies for Semiconductor Products[0]

The Marketing Act (1995:450)

Competition Act (1993:20)

The Secrecy Act (1980:100)

The Secrecy Regulation (1980:657)

Act (1994:1552) on Customs Control of Trademark Infringements

ANNEX II

OTHER LAWS AND REGULATIONS

TITLE	BRIEF DESCRIPTION
Copyright and Related Rights	
The Copyright (Commencement) Orders No. 1: SI 1989, No. 816 (C.21) (Made: 9 May 1989) No. 2: SI 1989, No. 955 (C.25) (Made: 9 June 1989) No. 3: SI 1989, No. 1032 (C.27) (Made: 20 June 1989) No. 4: SI 1989, No. 1303 (C.45) (Made: 27 July 1989) No. 5: SI 1990, No. 1400 (C.42) (Made: 10 July 1990) No. 6: SI 1990, No. 2168 (C.53) (Made: 1 November 1990)	These Orders bring into force the provisions of the Copyright Act. Entry into force of certain provisions: 1 August 1989. Entry into force of certain provisions: Forthwith. The Order amends Commencement Order No. 2 Entry into force of certain provisions: 28 July 1989. Entry into force of certain provisions: 13 August 1990. Entry into force of certain provisions: 7 January 1991.
The Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No. 2) Order 1989, SI 1989, No. 1067 (Entry into force: 1 August 1989)	The Order applies provisions of the Copyright Act to educational establishments and to teachers.
The Copyright (Industrial Process and Excluded Articles) (No. 2) Order 1989, SI 1989, No. 1070 (Entry into force: 1 August 1989)	The Order defines the meaning of "industrial process" referred to in the Copyright Act.
The Performance (Reciprocal Protection) (Convention Countries) Order 1995, SI 1995, No. 2990 (Entry into force: 15 December 1995/ 1 January 1996)	The order designates certain countries as enjoying reciprocal protection under Part II of the Copyright Act.
The Copyright (Application to Other Countries) Order 1993, SI 1993, No. 942 (Entry into force: 4 May 1993)	The Order applies the provisions of part of the Copyright Act to works originating in the countries specified in the Order.

~~The Copyright (Application to Other Countries) (Amendment) Order 1995~~, SI 1995, No. 2987 (Entry into force: 15 December 1995/ 1 January 1996)	The Order amends the Copyright (Application to Other Countries) Order 1993 (SI 1993, No. 942) as amended.
~~The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts and Cable Programmes) (Educational Recording Agency Limited) Order 1990~~, SI 1990, No. 879 (Made: 5 April 1990)	The order certifies the licensing scheme to be operated by the Educational Recording Agency Limited for the granting of recording licences to educational establishments.
~~The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts and Cable Programmes) (Educational Recording Agency Limited) (Amendment) Orders~~: 1994, SI 1994, No. 247 (Entry into force: 1 April 1994) 1993, SI 1993, No. 193 (Entry into force: 1 April 1993) 1992, SI 1992, No. 211 (Entry into force: 6 April 1992)	These Orders amend the licensing scheme as scheduled to The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts and Cable Programmes) (Educational Recording Agency Limited) Order 1990 (SI 1990, No. 879).
~~The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) Order 1993~~, SI 1993, No. 2755 (Entry into force: 1 January 1994)	The Order certifies a new licensing scheme under Section 143 of the Copyright Act.
~~The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Guild Sound and Vision Limited) (Revocation) Order 1990~~, SI 1990, No. 2007 (Made: 8 October 1990)	The Order revokes the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Guild Sound and Vision Limited) Order 1990, SI 1990, No. 878.
~~The Copyright (Status of Former Dependent Territories) Order 1990~~, SI 1990, No. 1512 (Entry into force: 2 August 1990)	The Order declares the status under Part I of the Copyright Act of certain former territories of [COUNTRY].
~~The Copyright (Material Open to Public Inspection) (Marking of Copies of Plans and Drawings) Order 1990~~, SI 1990, No. 1427 (Entry into force: 15 August 1990)	The Order provides exceptions to copyright in the case of certain material open to public inspection and marked in the manner specified in the Order.

~~The Copyright (Copying by Librarians and Archivists) Regulations 1989~~, SI 1989, No. 1212 (Entry into force: 1 August 1989)	The Regulations prescribe the descriptions of libraries and archives which may make and supply copies of copyright works for the purpose of private study or research.
~~The Copyright (Material Open to Public Inspection) (Marking of Copies of Maps) Order 1989~~, SI 1989, No. 1099 (Entry into force: 1 August 1989)	The Order provides exceptions to copyright in the case of certain material which is open to public inspection.
~~The Copyright (Material Open to Public Inspection) (International Organisations) Order 1989~~, SI 1989, No. 1098 (Entry into force: 1 August 1989)	The Order provides exceptions to copyright in the case of certain material which is open to public inspection.
~~The Copyright (International Organisations) Order 1989~~, SI 1989, No. 989 (Entry into force: 1 August 1989)	The Order confers copyright protection on works originating with the United Nations, its Agencies and the Organisation of American States.
~~The Copyright (International Conventions) Order 1979~~, SI 1979, No. 1715 (Entry into force: 24 January 1980)	The Order provides for the protection in [COUNTRY] and other specified countries of works and other subject matter originating in other countries party to international copyright conventions.
~~The Copyright (International Conventions) (Amendment) Order 1989~~, SI 1989, No. 157 (Entry into force: 8 March 1989)	The Order amends the Copyright (International Conventions) Order 1979 to take account of the accession of further countries to the Berne Convention.
~~The Copyright (International Conventions) (Amendment No. 3) Order 1988~~, SI 1988, No. 1855 (Entry into force: 24 November 1989)	The Order amends the Copyright (International Conventions) Order 1979 to take account of the accession of further countries to the Berne Convention.
~~The Copyright (Sub-titling of Broadcasts and Cable Programmes) (Designated Body) Order 1989~~, SI 1989, No. 1013 (Entry into force: 1 August 1989)	The Order authorises certain bodies to issue copies of sub-titled works.
~~The Copyright (Recordings of Folksongs for Archives) (Designated Bodies) Order 1989~~, SI 1989, No. 1012 (Entry into force: 1 August 1989)	The Order designates certain bodies to make copies of sound recordings of performances of songs for the purpose of including them in an archive.
~~The Copyright (Sound Recordings) (Indonesia) Order 1988~~, SI 1988, No. 797 (Entry into force: 26 May 1988)	The Order provides for the copyright protection in [COUNTRY] of sound recordings originating in [OTHER COUNTRY].

~~The Copyright (Recording for Archives of Designated Class of Broadcasts and Cable Programmes) (Designated Bodies) Order 1993~~, SI 1993, No. 74 (Entry into force: 12 February 1993)	The Order designates further bodies under Section 75 of the Copyright Act for maintaining an archive of broadcasts and cable programs.
~~The Copyright (Educational Establishments) (No. 2) Order 1989~~, SI 1989, No. 1068 (Entry into force: 1 August 1989)	The Order specifies educational establishments for the purposes of Part I of the Copyright Act.
~~The Copyright (Hong Kong)(Amendment) Order 1990~~, SI 1990, No. 588 (Entry into force: 12 April 1990)	The Order provides for the extension to [COUNTRY] of Section 32 of the Copyright Act.
Trademarks	
~~The Trade Marks (Fees) Rules~~, SI 1994, No. 2584 (Entry into force: 31 October 1994)	The Rules specify the fees payable in respect of any matters arising under the Trade Marks Act.
~~The Trade Marks and Service Marks (Forms) (Revocation) Rules 1994~~, SI 1994, No. 2582 (Entry into force: 31 October 1994)	The Rules revoke the Trade Marks and Service Marks (Forms) Rules 1986 and amending Rules.
~~Trade Marks (Claims to Priority from Relevant Countries) Order 1994~~, SI 1994, No. 2803 (Entry into force: 5 December 1994)	The Order specifies the countries or territories as relevant countries in which an application for registration of a trade mark will confer priority in respect of an application for a trade mark in [COUNTRY].
~~The Trade Marks (Claims to Priority from Relevant Countries) (Amendment) Order 1995~~, SI 1995, No. 2997 (Entry into force: 1 January 1996)	The Order amends the Trade Marks (Claims to Priority from Relevant Countries) Order 1994 (SI 1994, No. 2803) by substituting the schedule in that order by a schedule specifying also countries which are parties to the Agreement Establishing the WTO.
~~The Trade Marks Act 1994 (Commencement) Order 1994~~, SI 1994, No. 2550 (Made: 29 September 1994)	The Order brings into force all the provisions of the Trade Marks Act.
~~The Register of Trade Mark Agents Rules 1990~~, SI 1990, No.1458 (Entry into force: 1 October 1990)	The Rules regulate the registration of persons who act as agents for others for the purpose of applying for or obtaining the registration of trade marks.
~~The Registered Trade Mark Agents (Mixed Partnerships and Bodies Corporate) Rules 1994~~, SI 1994, No. 363 (Entry into force: 24 March 1994)	The Rules prescribe the conditions to be satisfied by certain bodies in order for them to carry on business under the title of "registered trade mark agents".

Geographical Indications	
~~The Wine Regulations 1995~~, SI 1995, No. 615 (Entry into force: 1 April 1995)	The Regulations provide for the enforcement of Regulation 1601 which lays down general rules on the description of aromatized wines.
~~The Spirit Drinks Regulations 1990~~, SI 1990, No. 1179. (Entry into force: 29 June 1990)	The Regulations provide for the administration, execution and enforcement of Regulation 1576 which lays down general rules on the description of spirits.
Industrial Designs	
~~The Designs (Convention Countries) Order 1994~~, SI 1994, No. 3219 (Entry into force: 13 January 1995)	An Order under the Designs Protection Act declaring certain countries to be convention countries for the purposes of the Act.
~~The Designs (Convention Countries) Amendment Order 1995~~, SI 1995, No. 2988 (Entry into force: 15 December 1995/ 25 December 1995/ 1 January 1996)	An Order amending Designs (Convention Countries) Order 1994 (SI 1994, No. 3219) by declaring certain countries to be convention countries for the purposes of the Act.
~~The Registered Designs (Fees) (No. 2) Rules 1995~~, SI 1995, No. 2913 (Entry into force: 4 December 1995)	The Rules specify fees to accompany forms prescribed under the Designs Protection Regulation.
~~The Designs (Companies Re-registration) Rules 1982~~, SI 1982, No. 299 (Entry into force: 5 April 1982)	The Rules provide that when a company re-registers as a public company the records of the Design Registry shall be treated as changed accordingly.
~~The Design Right (Reciprocal Protection) (No. 2) Order 1989~~, SI 1989, No.1294 (Entry into force: 1 August 1989)	The Order designates the countries enjoying reciprocal protection under the provisions of the Copyright, Designs and Patents Act 1988.
Patents (Including Plant Variety Protection)	
~~The Patents (Fees) Rules~~, SI 1995, No. 2164 (Entry into force: 4 September 1995)	The Rules specify the fees to be paid in respect of any matters arising under the Patents Act.
~~The Patent Agents (Mixed Partnerships and Bodies Corporate) Rules 1994~~, SI 1994, No. 362 (Entry into force: 24 March 1994)	The Rules prescribe, for the purpose of Section 276 of the Copyright Act, the conditions to be satisfied by certain bodies in order for them to carry on business under the name of "patent agents" or "patent attorneys".

~~The Patents (Supplementary Protection Certificate for Medicinal Products) Regulations 1992~~, SI 1992, No. 3091 (Entry into force: 10 December 1992/ 2 January 1993)	The Regulations extend the powers of the Secretary of State and extend and apply certain provisions of the Patents Act.
~~The Patents (Supplementary Protection Certificate for Medicinal Products) Rules 1992~~, SI 1992, No. 3162 (Entry into force: 2 January 1993)	The Rules implement Regulation 1768 which creates and sets out the conditions to the granting of a supplementary protection certificate for medicinal products which extends the patent for a pharmaceutical product by up to five years.
~~The Patents (Supplementary Protection Certificate for Medicinal Products) (Amendment) Rules 1993~~, SI 1992, No. 947 (Entry into force: 21 April 1993)	The Rules correct certain drafting errors in The Patents (Supplementary Protection Certificate for Medicinal products) Rules 1992 (SI 1992, No. 3162).
~~The Patents (Convention Countries) Order 1994~~, SI 1994, No. 3220 (Entry into force: 13 January 1995)	The Order specifies countries to be convention countries for the purposes of the Patents Act.
~~The Patents (Convention Countries) (Amendment) Order 1995~~, SI 1995, No. 2989 (Entry into force: 15 December 1995/ 25 December 1995/ 1 January 1996)	The Order amends the Patents (Convention Countries) Order 1994 (SI 1994, No. 3220).
~~The Patents (Licences of Right) (Exception of Pesticidal Use) Order 1989~~, SI 1989, No. 1202 (Entry into force: 14 August 1989)	The Order proscribes the granting of licences of right in certain patents whose term was extended from sixteen to twenty years by the Patents Act.
~~The Patent Agents (Non-recognition of Certain Agents by Comptroller) Rules 1990~~, SI 1990, No. 1454 (Entry into force: 13 August 1990)	The Rules authorise the Comptroller to refuse to register certain persons as patent agents.
~~The Register of Patent Agents Rules 1990~~, SI 1990, No. 1457 (Entry into force: 13 August 1990)	The Rules regulate the registration of persons who act as agents for others for the purpose of applying or obtaining patents in [COUNTRY].
~~The Patent Office (Address) Rules 1991~~, SI 1991, No. 675 (Entry into force: 15 April 1991)	The Rules specify the address of the Patent Office and Trade Mark Registry.
~~The Patents (Companies Re-registration) Rules 1982~~, SI 1982, No. 297 (Entry into force: 5 April 1982)	The Rules provide that when a company re-registers as a public company the records of the Patent Office shall be treated as changed accordingly.

~~The Patents Act 1949~~ (Made: 16 December 1949)	Certain provisions of the 1949 Act continue to apply to patents applied for, or granted before the coming into force of the 1967 Patents Act.
~~The Plant Breeders' Rights Regulations 1978~~, SI 1978, No. 294 (Entry into force: 1 April 1978)	The Regulations prescribe provisions to enable the granting of plant breeders' rights.
~~The Plant Breeders' Rights (Amendment) Regulations 1985~~, SI 1985, No. 1092 (Entry into force: 16 August 1985)	The Regulations implement the Plant Breeders' Rights Act.
~~The Plant Breeders' Rights (Amendment) Regulations 1993~~, SI 1993, No. 2775 (Entry into force: 1 December 1993)	The Regulations amend the Plant Breeders' Rights Regulations 1985 by replacing Schedule 3 with a new Schedule which specifies the reproductive and other material which must be delivered to the Controller when seeking grant of plant breeders' rights.
Layout-designs (Topographies) of Integrated Circuits	
~~The Design Right (Semiconductor Topographies) (Amendment) Regulations 1993~~, SI 1993, No. 2497 (Entry into force: 10 November 1993)	The Regulations amend The Design Right (Semiconductor Topographies) Regulations 1989 (SI 1989, No.1100) to show the current position on the additional classes of qualifying persons enjoying legal protection of topographies of integrated circuits.
Protection of Undisclosed Information	
~~The Control of Pesticides Regulations 1986~~, SI 1986, No. 1510 (Entry into force: 6 October 1986)	The Regulations empower the Minister to give approval to pesticides. The Regulations include provisions protecting the disclosure of confidential information.
~~The Copyright, Designs and Patents Act 1988~~	Section 171(1) of the Act emphasises the precedence of the operation of any rule of equity relating to breaches of trust or confidence.
~~The Patents Act 1977~~	The Act prohibits in certain circumstances the disclosure of information without the consent of the applicant for the patent.
~~The Trade Marks Act 1994~~	The Act prohibits in certain circumstances the disclosure of information without the consent of the applicant for the trade mark.

~~The Registered Designs Act 1949~~	The Act prescribes that where an application for the registration of a design has been abandoned or refused, information filed in pursuance of the registration shall not be open to public inspection.
~~The Medicines Act 1968~~	The Act which makes provisions with respect to medicinal products includes a provision (Section 118) restricting the disclosure of information. [*Full Act available on request.*]
Civil Judicial Procedures and Remedies	
~~The Copyright, Designs and Patents Act 1988~~	The Act sets up special county courts to deal with patents and design matters.
~~The Patents County Court (Designation and Jurisdiction) Order 1994~~, SI 1994, No. 1609 (Entry into force: 11 July 1994)	The Order establishes a patents county court.
~~The Supreme Court Act 1981~~ ~~The Rules of the Supreme Court 1965 (Order 1 r.1)~~ as amended ~~The County Court Act 1984~~ ~~The County Court Rules 1981~~, SI 1981, No. 1687 as amended	These Acts and Statutory Instruments govern Civil Judicial Proceedings in [COUNTRY]. Further details on civil judicial procedures and remedies, including copies of the relevant legislation, will follow shortly with the responses to the Checklist of Issues on Enforcement (IP/C/5).
~~The Design Right (Proceedings before Comptroller) Rules 1989~~, SI 1989, No. 1130 (Entry into force: 1 August 1989)	The Rules prescribe the forms and fees and the procedures to be followed in connection with proceedings before the Comptroller in relation to design rights.
~~The Design Right (Proceedings before Comptroller) (Amendment) Rules 1990~~, SI 1990, No.1453 (Entry into force: 13 August 1990)	The Rules amend the Design Right (Proceedings before Comptroller) Rules 1989 (SI 1989, No.1130).
~~The Design Right (Proceedings before Comptroller) (Amendment) Rules 1992~~, SI 1992, No. 615 (Entry into force: 1 August 1989)	The Rules amend the fees prescribed in The Design Right (Proceedings before Comptroller) Rules 1989 (SI 1989, No. 1130).
~~The Copyright Tribunal Rules 1989~~, SI 1989, No. 1129 (Entry into force: 1 August 1989)	The Rules prescribe the procedures to be followed before the Copyright Tribunal in the hearing and determination of applications and references to it under the Copyright, Designs and Patents Act 1988.

~~The Copyright Tribunal (Amendment) Rules 1991~~, SI 1991, No. 201 (Entry into force: 1 March 1991)	The Rules prescribe the amendments to be made to The Copyright Tribunal Rules 1989 (SI 1989, No. 1129) in relation to sound recordings in broadcasts and cable programmes and advanced programme information.
~~The Copyright Tribunal (Amendment) Rules 1992~~, SI 1992, No. 467 (Entry into force: 27 March 1992)	The Rules correct an error in The Copyright Tribunal Rules 1989 (SI 1989, No.1129).
Special Requirements Related to Border Measures	
~~The Counterfeit and Pirated Goods (Consequential Provisions) Regulations 1995~~, SI 1995, No. 1447 (Entry into force: 1 July 1995)	The Regulations make provisions consequential upon Regulation 3295 concerning counterfeit and pirated goods.
~~The Trade Marks (Measures Relating to Counterfeit Goods) Regulations 1995~~, SI 1995, No. 1444 (Entry into force: 1 July 1995)	The Regulations amend Section 89(3) of the Trade Marks Act to comply with Regulation 3842 laying down measures relating to counterfeit goods.
~~The Copyright and Rights in Performances (Notice of Seizure) Order 1989~~, SI 1989, No. 1006 (Entry into force: 1 August 1989)	The Order prescribes the form of notice required for seizing and detaining infringing copies of works or illicit recordings of a performance.
~~The Copyright (Customs) Regulations 1989~~, SI 1989, No. 1178 (Entry into force: 1 August 1989)	The Regulations prescribe the forms, fees and conditions for an owner of certain copyright works to ask that imported goods be treated as prohibited goods.
~~The Trade Marks (Customs) Regulations 1994~~, SI 1994, No. 2625 (Entry into force: 31 October 1994)	The Regulations prescribe the form in which the proprietor of a registered trade mark may give notice of the expected arrival of goods which he wishes to be treated as prohibited goods.
Criminal Procedures	
~~The Criminal Justice Acts 1967 - 1993~~ as amended.	These Acts are the main Acts governing criminal judicial proceedings in [COUNTRY]. *Further details on criminal procedures, including copies of the relevant legislation, will follow shortly with the responses to the Checklist of Issues on Enforcement (IP/C/5).*

TRIPS-V

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

TEXT OF THE AGREEMENT

ANNEX 1C

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

PART I GENERAL PROVISIONS AND BASIC PRINCIPLES

PART II STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

1. Copyright and Related Rights
2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information
8. Control of Anti-Competitive Practices in Contractual Licences

PART III ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

1. General Obligations
2. Civil and Administrative Procedures and Remedies
3. Provisional Measures
4. Special Requirements Related to Border Measures
5. Criminal Procedures

PART IV ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

PART V DISPUTE PREVENTION AND SETTLEMENT

PART VI TRANSITIONAL ARRANGEMENTS

PART VII INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:

PART I

GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1

Nature and Scope of Obligations

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.[20] In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.[21] Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

Article 2

Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

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[20]When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

[21]In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection[22] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) in respect of the rights of performers, producers of phonograms and

[22]For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

broadcasting organizations not provided under this Agreement;

(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

Article 5

Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8

Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9

Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10

Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11

Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12

Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13

Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14

Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

SECTION 2: TRADEMARKS

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16

Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17

Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18

Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19

Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in

a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.

This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21

Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.[23]

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member,

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[23]Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (*a*) for at least 10 years preceding 15 April 1994 or (*b*) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25

Requirements for Protection

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26

Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

SECTION 5: PATENTS

Article 27

Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.[24] Subject to

[24]For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28

Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing[25] for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

[25]This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

Article 29

Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30

Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 31

Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use[26] of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the 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. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after

[26]"Other use" refers to use other than that allowed under Article 30.

judicial or administrative process to be anti-competitive;

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32

Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33

Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.[27]

Article 34

Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

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[27]It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35

Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36

Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:[28] importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

Article 37

Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

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[28]The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

Article 38

Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[29] so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation,

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[29]For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of

relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of

resources as between enforcement of intellectual property rights and the enforcement of law in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42

Fair and Equitable Procedures

Members shall make available to right holders[30] civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 43

Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

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[30]For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

Article 44

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation

of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47

Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest.

A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES[31]

Article 51

Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures[32] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods[33] may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation

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[31]Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[32]It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[33]For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the

of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52

Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53

Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

(..продолжение)

rights of the owner of the trademark in question under the law of the country of importation;

(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Article 54

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55

Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56

Indemnification of the Importer
and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57

Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58

Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60

De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V

DISPUTE PREVENTION AND SETTLEMENT

Article 63

Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry

into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI

TRANSITIONAL ARRANGEMENTS

Article 65

Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66

Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67

Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII

INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 68

Council for Trade-Related Aspects of Intellectual Property Rights

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69

International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70

Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this

Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;

(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71

Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73

Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

TRIPS-VI

TEXT OF THE AGREEMENT BETWEEN WIPO AND THE WTO

AGREEMENT BETWEEN
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION
AND
THE WORLD TRADE ORGANIZATION

TABLE OF CONTENTS

		Page
Preamble		3
Article 1:	Abbreviated Expressions	3
Article 2:	Laws and Regulations	3
Article 3:	Implementation of Article 6ter of the Paris Convention for the Purposes of the TRIPS Agreement	5
Article 4:	Legal-Technical Assistance and Technical Cooperation	5
Article 5:	Final Clauses	6

Preamble

The World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO),

Desiring to establish a mutually supportive relationship between them, and with a view to establishing appropriate arrangements for cooperation between them,

Agree as follows:

Article 1

Abbreviated Expressions

For the purposes of this Agreement:

(i) "WIPO" means the World Intellectual Property Organization;

(ii) "WTO" means the World Trade Organization;

(iii) "International Bureau" means the International Bureau of WIPO;

(iv) "WTO Member" means a party to the Agreement Establishing the World Trade Organization;

(v) "the TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Agreement Establishing the World Trade Organization;

(vi) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised;

(vii) "Paris Convention (1967)" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967;

(viii) "emblem" means, in the case of a WTO Member, any armorial bearing, flag and other State emblem of that WTO Member, or any official sign or hallmark indicating control and warranty adopted by it, and, in the case of an international intergovernmental organization, any armorial bearing, flag, other emblem, abbreviation or name of that organization.

Article 2

Laws and Regulations

(1) [*Accessibility of Laws and Regulations in the WIPO Collection by WTO Members and Their Nationals*] The International Bureau shall, on request, furnish to WTO Members and to nationals of WTO Members copies of laws and regulations, and copies of translations thereof, that exist in its collection, on the same terms as apply to the Member States of WIPO and to

nationals of the Member States of WIPO, respectively.

(2) [*Accessibility of the Computerized Database*] WTO Members and nationals of WTO Members shall have access, on the same terms as apply to the Member States of WIPO and to nationals of the Member States of WIPO, respectively, to any computerized database of the International Bureau containing laws and regulations. The WTO Secretariat shall have access, free of any charge by WIPO, to any such database.

(3) [*Accessibility of Laws and Regulations in the WIPO Collection by the WTO Secretariat and the Council for TRIPS*]

(a) Where, on the date of its initial notification of a law or regulation under Article 63.2 of the TRIPS Agreement, a WTO Member has already communicated that law or regulation, or a translation thereof, to the International Bureau and that WTO Member has sent to the WTO Secretariat a statement to that effect, and that law, regulation or translation actually exists in the collection of the International Bureau, the International Bureau shall, on request of the WTO Secretariat, give, free of charge, a copy of the said law, regulation or translation to the WTO Secretariat.

(b) Furthermore, if, for the purposes of carrying out its obligations under Article 68 of the TRIPS Agreement, such as monitoring the operation of the TRIPS Agreement or providing assistance in the context of dispute settlement procedures, the Council for TRIPS of the WTO requires a copy of a law or regulation, or a copy of a translation thereof, which had not previously been given to the WTO Secretariat under subparagraph (a), and which exists in the collection of the International Bureau, the International Bureau shall, upon request of either the Council for TRIPS or the WTO Secretariat, give to the WTO Secretariat, free of charge, the requested copy.

(c) The International Bureau shall, on request, furnish to the WTO Secretariat on the same terms as apply to Member States of WIPO any additional copies of the laws, regulations and translations given under subparagraph (a) or (b), as well as copies of any other laws and regulations, and copies of translations thereof, which exist in the collection of the International Bureau.

(d) The International Bureau shall not put any restriction on the use that the WTO Secretariat may make of the copies of laws, regulations and translations transmitted under subparagraph (a), (b) or (c).

(4) [*Laws and Regulations Received by the WTO Secretariat from WTO Members*]

(a) The WTO Secretariat shall transmit to the International Bureau, free of charge, a copy of the laws and regulations received by the WTO Secretariat from WTO Members under Article 63.2 of the TRIPS Agreement in the language or languages and in the form or forms in which they were received, and the International Bureau shall place such copies in its collection.

(b) The WTO Secretariat shall not put any restriction on the further use that the International Bureau may make of the copies of the laws and regulations transmitted under subparagraph (a).

(5) [*Translation of Laws and Regulations*] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same assistance for translation of laws and regulations for the purposes of Article 63.2 of the TRIPS Agreement as it makes available to Members of WIPO which are developing countries.

Article 3

Implementation of Article 6ter of the Paris Convention for the Purposes of the TRIPS Agreement

(1) [*General*]

(a) The procedures relating to communication of emblems and transmittal of objections under the TRIPS Agreement shall be administered by the International Bureau in accordance with the procedures applicable under Article 6ter of the Paris Convention (1967).

(b) The International Bureau shall not recommunicate to a State party to the Paris Convention which is a WTO Member an emblem which had already been communicated to it by the International Bureau under Article 6ter of the Paris Convention prior to January 1, 1996, or, where that State became a WTO Member after January 1, 1996, prior to the date on which it became a WTO Member, and the International Bureau shall not transmit any objection received from the said WTO Member concerning the said emblem if the objection is received by the International Bureau more than 12 months after receipt of the communication of the said emblem under Article 6ter of the Paris Convention by the said State.

(2) [*Objections*] Notwithstanding paragraph (1)(a), any objection received by the International Bureau from a WTO Member which concerns an emblem that had been communicated to the International Bureau by another WTO Member where at least one of the said WTO Members is not party to the Paris Convention, and any objection which concerns an emblem of an international intergovernmental organization and which is received by the International Bureau from a WTO Member not party to the Paris Convention or not bound under the Paris Convention to protect emblems of international intergovernmental organizations, shall be transmitted by the International Bureau to the WTO Member or international intergovernmental organization concerned regardless of the date on which the objection had been received by the International Bureau. The provisions of the preceding sentence shall not affect the time limit of 12 months for the lodging of an objection.

(3) [*Information to Be Provided to the WTO Secretariat*] The International Bureau shall provide to the WTO Secretariat information relating to any emblem communicated by a WTO Member to the International Bureau or communicated by the International Bureau to a WTO Member.

Article 4

Legal-Technical Assistance and Technical Cooperation

(1) [*Availability of Legal-Technical Assistance and Technical Cooperation*] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same legal-technical assistance relating to the TRIPS Agreement as it makes available to Member States of WIPO which are developing countries. The WTO Secretariat shall make available to Member States of WIPO which are developing countries and are not WTO Members the same technical cooperation relating to the TRIPS Agreement as it makes available to developing country WTO Members.

(2) [*Cooperation Between the International Bureau and the WTO Secretariat*] The International Bureau and the WTO Secretariat shall enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries,

so as to maximize the usefulness of those activities and ensure their mutually supportive nature.

(3) [*Exchange of Information*] For the purposes of paragraphs (1) and (2), the International Bureau and the WTO Secretariat shall keep in regular contact and exchange non-confidential information.

Article 5

Final Clauses

(1) [*Entry into Force of this Agreement*] This Agreement shall enter into force on January 1, 1996.

(2) [*Amendment of this Agreement*] This Agreement may be amended by common agreement of the parties to this Agreement.

(3) [*Termination of this Agreement*] If one of the parties to this Agreement gives the other party written notice to terminate this Agreement, this Agreement shall terminate one year after receipt of the notice by the other party, unless a longer period is specified in the notice or unless both parties agree on a longer or a shorter period.

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Done in Geneva on 22 December 1995.