

REVIEW OF LEGISLATION

Responses from Argentina to the Questions Posed by Canada and Switzerland

Addendum

By means of communications from the Permanent Mission of Argentina dated 6 June 2001, the Secretariat has received the following response to one of the questions posed by Canada, and information relating to the other questions posed by Canada and Switzerland as circulated in documents IP/C/W/261 and 263 respectively.

CANADA

1. Please describe how the enforcement obligations (Articles 41-61 of the TRIPS Agreement and throughout) have been implemented.

The first question refers to issues dealt with at the following consultations with the United States within the framework of the DSU: "Argentina - Patent Protection for Pharmaceuticals and Test Data Protection for Agricultural Chemicals" (WT/DS171) and "Argentina - Certain Measures on the Protection of Patents and Test Data" (WT/DS196).

In order to protect its rights at the said consultations, Argentina will not be answering the first question posed by Canada within the framework of the review of national implementing legislation by the Council for TRIPS.

Argentina wishes to take this opportunity to point out to Canada that, although it confirms its willingness to fulfil its obligations with regard to the review of national implementing legislation by the Council for TRIPS, it is in its interest to ensure that the review process does not prejudice or affect either the course or outcome of the consultations being held under the DSU.

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

Argentine legislation affords foreign works the same degree of protection as domestic works. With regard to administrative formalities, foreign works are actually in a better position than domestic works since they are exempt from all formalities.

SWITZERLAND

A. GEOGRAPHICAL INDICATIONS

1. Are the provisions of the TRIPS Agreement directly applicable in your legal system?

Please see the communication from Argentina at the end of this document.

B. PATENTS

2. Does your legislation grant patent protection to all categories of products or are there any exceptions? If so, please explain in detail what kind of exceptions exist and how they comply with Article 27 of the TRIPS Agreement. In particular, is patent protection granted to all pharmaceutical products?

Please see the communication from Argentina at the end of this document.

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

Please see the communication from Argentina at the end of this document.

4. Please explain how Article 28.2 of the TRIPS Agreement is incorporated in your legal system.

Please see the communication from Argentina at the end of this document.

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

Please see the communication from Argentina at the end of this document.

6. Please explain how the principle of the reversal of burden of proof in a process patent litigation, as required by Article 34 of the TRIPS Agreement, is implemented in your legislation. Article 88 of Argentinian Law No. 24.481 on Patent and Utility Models sets 1 January 2000 as the date before which a product cannot be considered as new. Please explain how this provision is compatible with Article 70.2 of the TRIPS Agreement.

Please see the communication from Argentina at the end of this document.

7. Please explain whether parallel imports of patented products are permitted by your legislation.

Please see the communication from Argentina at the end of this document.

C. PROTECTION OF UNDISCLOSED INFORMATION

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

Please see the communication from Argentina at the end of this document.

D. ENFORCEMENT

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

Please see the communication from Argentina at the end of this document.

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

Please see the communication from Argentina at the end of this document.

11. How does your law comply with the requirement of "prompt and effective provisional measures" set in Article 50 of the TRIPS Agreement, in particular for patents? Please cite the relevant laws and provisions.

Please see the communication from Argentina at the end of this document.

E. PROTECTION OF EXISTING SUBJECT-MATTER

12. Please explain how Article 70.7 of the TRIPS Agreement is implemented in your legislation. What is considered to be "new matter" in your law?

Communication from Argentina:

I have been instructed by the competent authorities to inform you that the questions posed by Switzerland refer to issues dealt with at the following consultations with the United States in the framework of the DSU: "Argentina - Patent Protection for Pharmaceuticals and Test Data Protection for Agricultural Chemicals" (WT/DS171) and "Argentina - Certain Measures on the Protection of Patents and Test Data" (WT/DS196).

It should also be mentioned that Switzerland is taking part in both consultations as a third party.

In the light of the above and in order to protect its rights at the said consultations, Argentina will not be answering the questions posed by Switzerland within the framework of the review of national implementing legislation by the Council for TRIPS.

Argentina wishes to take this opportunity to point out to Switzerland that, although it confirms its willingness to fulfil its obligations with regard to the review of national implementing legislation by the Council for TRIPS, it is in its interest to ensure that the review process does not prejudice or affect either the course or outcome of the consultations being held under the DSU.
