

WORLD TRADE ORGANIZATION

RESTRICTED

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

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REVIEW OF LEGISLATION

Responses from Botswana to the outstanding initial and follow-up questions
posed by the European Communities and their member States,
Switzerland and the United States

Addendum

By means of a communication from the Permanent Mission of Botswana dated 18 December 2001, the Secretariat has received the following responses to the outstanding initial and follow-up questions posed by the European Communities and their member States, Switzerland and the United States, as circulated in documents IP/C/W/274, IP/C/W/263/Add.1, IP/C/W/268 and IP/C/W/268/Add.2, respectively.

EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

Response to outstanding initial question 21:

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

The Botswana Industrial Property Act 1996 does not provide for the right to issue a compulsory licence for industrial designs.

SWITZERLAND

Response to follow-up question 1:

You mention that you are currently developing the legislation on geographical indications. Please explain what the draft Act provides and when the new regulation is supposed to be adopted.

The draft Act has not been approved by the Legislature, therefore we are unable to provide information on the proposed legislation.

Response to follow-up question 2:

Please confirm that your legislation grants patent protection to all categories of products. If there are exceptions, please specify.

In accordance with the Botswana Industrial Property Act 1996, Section 8 of the legislation grants patent protection to all patentable inventions categories of products.

In terms of section 9 the following shall, even if they are inventions, not be protected as patents:

- (a) a discovery;
- (b) a scientific theory or mathematical method;
- (c) a literary, dramatic, musical or artistic work or other aesthetic creation;
- (d) a scheme, rule or method for doing business; performing a mental act or playing a game;
- (e) a program for a computer;
- (f) method for the treatment of the human or animal body by surgery; and
- (g) a diagnostic method practised on the human or animal body.

Response to follow-up question 4:

You mention that Section 30 of the Industrial Property Act, 1996 sets out most of the conditions enumerated in Article 31 of the TRIPS Agreement. Please confirm that, with the mentioned amendment of your law relating to Article 31 (l) of the TRIPS Agreement, the granting of compulsory licences will be subject to all the conditions enumerated in Article 31 of the TRIPS Agreement. Please explain what the draft Act provides in this regard. When will the new regulation enter into force?

The draft amendment Act has not yet been approved by the Legislature, therefore, we are unable to provide information on the provisions of the proposed amendment.

Response to follow-up question 6:

A. *You mention that, currently, you do not have laws for protection of undisclosed information in Botswana, but that you will provide for such protection in the amendment of your Industrial Property Act, 1996. Please explain what the draft amendment provides in relation to protection of undisclosed information. When will the new regulation enter into force?*

The draft amendment Act has not yet been approved by the Legislature, therefore, we are unable to provide information on the provisions of the proposed amendment.

B. *Referring to the issue of unfair commercial use of data submitted by an applicant to the responsible State Agency in the procedure for market authorisation of a pharmaceutical or of an agricultural chemical product, please explain in detail if the draft amendment will prohibit a second applicant from relying on, or from referring to, the original data of the first applicant, when applying subsequently for market authorisation for his own product. Will the responsible State Agency require*

the same amount of data from the second applicant as from the first applicant? Will the draft amendment set a specific term of protection for undisclosed test or other data of the first applicant?

See response to part A above.

Response to follow-up question 7:

Please explain how your legislation implements Article 50 of the TRIPS Agreement and how the special requirements related to border measures of Articles 51 to 60 of the TRIPS Agreement are implemented in your legislation.

Under the Copyright and Neighbouring Rights Act, Section 29(4) provides that:

"... where a Chief or Senior Magistrate is satisfied from information given on oath or affirmation by the investigating officer, that urgent action is required to obtain evidence pertaining to the contravention of the provisions of this Act, which evidence is likely to be concealed or destroyed, the Magistrate may dispense with an procedural requirements and grant a search warrant to the investigating officer at such time and place and under such conditions as the urgency of the matter may require."

Furthermore, on special requirements related to border measures of Articles 51 to 60 of the TRIPS Agreement, the Copyright and Neighbouring Rights Act, 2000, Section 32 provides that any goods imported into the country that are in contravention of the provisions of this Act, may be placed under an embargo, destroyed or otherwise disposed of by the Customs officials as provided for under Sections 115 and 116 of the Customs and Duty Act Cap 50:01.

UNITED STATES

Response to outstanding initial question 32:

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

Botswana does not have statistical information relating to civil copyright, trademarks, patents and industrial designs enforcement because there has never been lawsuits filed in court against these prices of legislation.

Botswana has not yet put in place legislation related to integrated circuit layout-designs, trade secrets and geographical indications.

Response to follow-up question 3:

Please explain how the Intellectual Property Act of 1996 will be amended to include the protections that are required under Articles 39.2 and 39.3 of the TRIPS Agreement. Please address how the amended law will ensure that a second comer will not be allowed to rely on the data that is

submitted to the regulatory authorities in support of a pioneer drug application, as required by the unfair commercial use provisions of Article 39.3 of the TRIPS Agreement.

The amendment of the Industrial Property Act of 1996 will take into consideration amongst others the protection as required under Articles 39.2 and 39.3 of the TRIPS Agreement. Since the amendment has not been developed yet, it is not possible to disclose information on how it might look.
