

REVIEW OF LEGISLATION ON ENFORCEMENT

CZECH REPUBLIC¹

The present document reproduces the introductory statement made by the delegation of the Czech Republic, the questions put to it and the responses given in the review of legislation on enforcement at the Council's meeting of 17-21 November 1997.²

I. INTRODUCTORY STATEMENT

In order to expedite our work I would like to make just a few brief introductory remarks concerning the ongoing review process of national legislation on enforcement.

- (a) The Czech Republic attaches great importance to the issue of enforcement in the field of intellectual property rights and it has submitted all required information for today's review. As it was the case in previous reviews of this Council, we would like to state for the record that we have made our notification without prejudice to the provisions of paragraph 3 of Article 65 allowing the delay of four years in implementing the TRIPS Agreement for countries in the process of transformation from a centrally-planned into a market, free-enterprise economy.
- (b) The Czech Republic holds the view that its national legislation does not require it to postpone the application of the respective TRIPS provisions as our domestic laws and regulations providing the protection in the above-mentioned area are consistent with the TRIPS Agreement. In addition, we are working on further improvement and "tuning" of appropriate national legislation and two new pieces of legislation are in the pipeline:

First - the draft of the Act laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods has already been submitted to the Government for discussion in the Legislation Council of the Government of the Czech Republic and should enter into force in the first half of next year.

Second - proposal of a comprehensive copyright law encompassing basic copyright legislation and following amendments to it is in a final stage of preparation and soon will be submitted to the government and the Czech Parliament for its final approval. This should help judges and administrative officials to strengthen the authority to

¹ As regards laws and regulations relevant to the area under review and notified by the Czech Republic under Article 63.2 of the Agreement, reference is made to documents IP/N/1/CZE/1 (Annex II) and IP/N/6/CZE/1.

² The minutes of this meeting have been circulated as document IP/C/M/16.

order, in certain circumstances, other remedies, particularly what they already had under general legislation, i.e. destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods.

Our national implementing legislation on enforcement was notified to the Secretariat and is contained in document IP/N/6/CZE/1 of 16 September 1997. In connection with this review the Czech Republic has received 92 questions in writing from the European Communities and their Member States, the United States and Japan. We have made our best effort and prepared written responses to all those questions. They are available for today's meeting in the form of a Secretariat advance copy of the document.

Nevertheless, I would like to point out the fact that we could have economised much of our time if the questions which we had received had been based on our above-mentioned notification of the national implementing legislation than put as general questions to each and every specific Article of the TRIPS Agreement - Part III dealing with enforcement of intellectual property rights. In preparing responses to all 92 questions we have been, in many cases, rewriting what was already contained in our replies to the Checklist of Issues on Enforcement.

II. REPLIES TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

1. Pursuant to Article 10 of the Constitution of the Czech Republic, certain international conventions which are ratified and published in the Czech Republic in accordance with applicable procedures become part of the domestic law of the Czech Republic and have precedence over same. It is the understanding of the European Communities and their Member States that the TRIPS Agreement belongs to this group of international conventions.

The Czech language version of Article 41.4 of the TRIPS Agreement states that the judicial review of initial decisions on the merits of a case shall be "with the reservation of legal provisions of a Member on jurisdiction of its authorities concerning the importance of the case". This does not correspond to the English version of the text of the TRIPS Agreement.

Against this background, please explain the interpretation of the Czech Republic of the Czech language provisions of Article 41.1 of the TRIPS Agreement with respect to judicial review of the legal aspects of initial judicial decisions.

The TRIPS Agreement is not an international agreement as defined in Article 10 of the Czech Constitution. It is not an international convention dealing with human rights and fundamental liberties which the Czech Republic would be bound by and which would prevail over any legal act.

Insofar as review of court rulings are concerned, there exists a guaranteed right to appeal against every ruling to a higher-instance court.

If the matter at hand has already been decided by a court of appeal, it is possible to resort, under terms and conditions stipulated by the law, to an extraordinary remedy represented by an appeal to the Supreme Court.

Similarly, it is also possible to submit, under terms and conditions stipulated by the law, a proposal to renew the proceedings, which is also regarded as an extraordinary legal remedy.

In the Czech Republic, review of administrative rulings by courts are guaranteed by a system of administrative judiciary. Courts in general are competent to examine administrative rulings.

Courts examine valid and effective administrative rulings on the basis of a charge (Article 247 of the Code of Civil Procedure). In doing so, they examine whether the valid and effective administrative ruling in question is legal. Depending on the outcome of the proceedings, the court can either reject the charge, or cancel the ruling and return the matter at hand to the administrative body for a re-trial and a new ruling. In this respect, the administrative body handling the case is bound by the legal opinion of the court.

The Czech translation of Article 41.4 of the TRIPS Agreement cannot be interpreted as "with the reservation of legal provisions of a Member on jurisdiction of its authorities concerning the importance of a case" since it could mean a factual change of Article 41.4.

Based on language analysis it has been concluded that the Czech version is, although not precisely, in line with the English version of the TRIPS Agreement and means "subject to jurisdictional provisions in a Members law concerning the importance of a case". It is however true, that the Czech translation is closer to the French version of the TRIPS Agreement that reads "*sous réserve des dispositions attributives de compétence prévues par la législation d'un Membre concernant l'importance d'une affaire*".

The Czech version of Article 41.4 of the TRIPS Agreement is interpreted in line with prevailing WTO language versions of the TRIPS Agreement.

2. Do Czech judicial authorities have the authority to compel the production of evidence by a party if this is necessary to the other party to substantiate its claims in accordance with Article 43.1 of the TRIPS Agreement? Please explain.

The power of the court to order the other party to furnish evidence in its possession stems from Article 120 of the Code of Civil Procedure. The party indicates evidence corroborating its allegations, and states that it is in possession of the adverse party. If the court decides to have the evidence presented, it will order the other party to do so. If that party fails to furnish the evidence even if ordered to do so by the court, the latter will take this into account when assessing the evidence presented in the course of the proceedings.

[Follow-up question from the EC]

Under what circumstances and on what legal basis can the judicial authorities ensure the protection of confidential information as required by Article 43.1 of the TRIPS Agreement?

Pursuant to Article 124 of the Code of Civil Procedure, the furnishing and presentation of evidence must be done in a way preventing state, economic, business, or professional secrets and confidential information from being disclosed, and taking into account the state-recognized obligation of secrets and confidential information from being disclosed, and taking into account the state-recognized obligation of secrecy. This provision shall also apply *mutatis mutandis* to facts established in a manner other than through an interrogation.

Similarly provisions on exclusion of public in paragraph 116 of the Code of Civil Procedure is aimed at the protection of confidential information. Courts during civil proceedings also fully

respect Law No. 101/72 Coll. on state secrets; Law No. 21/92 Coll. on banks and Act No. 337/92 Coll. on the administration of taxes and fees.

3. Do Czech judicial authorities have the authority to order that:

- (a) infringing goods be disposed of outside the channels of commerce or be destroyed, without compensation; and**
- (b) materials and implements the predominant use of which has been in the creation of infringing goods be disposed of outside the channels of commerce without compensation;**

in accordance with Article 46 of the TRIPS Agreement?

Furthermore, does Czech legislation specify with regard to counterfeit trademark goods that the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into channels of commerce (Article 46 of the TRIPS Agreement)? Please explain.

The legal system of the Czech Republic does not yet provide for a court order to destroy goods, materials and tools as per Article 46 of the TRIPS Agreement in administrative proceedings. However such possibility does exist in criminal proceedings.

[Follow-up questions from the EC]

Does the Government of the Czech Republic intend to amend its legislation in order to provide for a court order to destroy goods, materials and tools as per Article 46 of the TRIPS Agreement? If so, what is the foreseen timing?

Under current substantial laws in civil proceedings a court has no explicitly given possibilities to order destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods.

Nevertheless, when applying Article 32 of the Copyright Law, Article 75 of the Patent Law and Article 15 of the Trademark Law, as well as other related laws pertaining to industrial property rights, Czech courts are already using the possibilities to make orders to destroy goods, materials and tools. In this case they are referring to a general authorization embodied in the above mentioned laws, allowing them to order disposal of unlawful consequences of infringements. Current judicial practice described in this paragraph is responding to the commitments of the Czech Republic stemming from the TRIPS Agreement.

Prepared amendments to current laws regulating intellectual property rights will give a court explicit authority to order destruction of goods, materials and tools. As for the foreseen timing, the adoption of the above mentioned amendments of laws is expected in the year 1999. In our introductory statement we have already given information on a first such proposal concerning comprehensive copyright laws.

Please describe in detail the possibilities which exist in criminal proceedings.

Our reply to question 8 describes the forfeiture of a thing as a punishment. Under paragraph 73 of the Penal Code a court may order confiscation of a thing. If a court did not order forfeiture of a thing it may order such thing to be confiscated if:

- (a) it belongs to an offender who cannot be punished;
- (b) whose punishment a court waived;
- (c) if safety of people and property or other similar public interest requires.

4. Do Czech judicial authorities have the authority to order provisional measures to preserve relevant evidence in regard to an alleged infringement in accordance with Article 50.1(b) of the TRIPS Agreement? Please explain.

Pursuant to the Code of Civil Procedure, the court, acting upon a request, may order a provisional measure, if it is necessary to stabilize the situation existing between the plaintiff and the defendant or if there is a concern that the exercise or enforcement of its ruling may be threatened. Insofar as the protection of intellectual property is concerned, it is thus possible, for example, to forbid disposing of certain articles or rights, or to order one of the parties to do, refrain from, or put up with, something. Such a provisional measure can be imposed before or during a trial. No court proceedings or deliberations are needed to impose a provisional measure. A provisional measure can be ordered and instituted practically immediately, as long as relevant legal requirements have been met.

5. Does Czech law require that provisional measures be revoked or otherwise cease to have effect, at the request of the defendant, if proceedings are not initiated within a reasonable period in accordance with Article 50.6 of the TRIPS Agreement? Please explain.

Pursuant to Article 76, paragraph 3, of the Code of Civil Procedure, the court, when imposing a provisional measure, may order the party that proposed it to submit, by the date it will set, a proposal for a motion to commence the proceedings in the matter at hand. Pursuant to Article 77, paragraph 1, letter (a), the provisional measure will be rendered null and void if the party that proposed it fails to submit, by the date set by the court, a proposal for a motion to commence the proceedings in the matter at hand.

6. In the case of the importation of goods suspected to be pirated copyright goods, do the laws of the Czech Republic provide for the following:

- (a) an obligation on the right holder to provide adequate evidence to satisfy the competent authorities that there is *prima facie* an infringement in accordance with Article 52 of the TRIPS Agreement;
- (b) the authority of competent authorities to require an applicant to provide security or equivalent assurance in accordance with Article 53.1 of the TRIPS Agreement;
- (c) an obligation on competent authorities to provide the importer and the applicant with prompt notice of the suspension of the release of goods in accordance with Article 54 of the TRIPS Agreement;

- (d) the release of goods in the event that proceedings leading to a decision on the merits of the case or proceedings prolonging the suspension have not been initiated or taken in accordance with Article 55 of the TRIPS Agreement;
 - (e) the authority of competent authorities to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for injury caused through the wrongful detention of goods or through the detention of goods released pursuant to Article 55 of the TRIPS Agreement, in conjunction with Article 56 of the TRIPS Agreement;
 - (f) the authority of competent authorities to give the right holder and the importer an opportunity to inspect the detained goods in accordance with Article 57 of the TRIPS Agreement?
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- (a) yes - an intellectual property right holder is obliged to provide adequate evidence to make it clear for the customs authorities that a counterfeit or pirated goods is concerned;
 - (b) not yet, the situation will change when the Act laying down measures to prohibit the release of counterfeit and pirated goods for free circulation, export, re-export or release for a suspensive procedure enters into force;
 - (c) customs authorities are obliged to provide the importer and the applicant with prompt notice informing them that the administrative proceedings regarding the release of goods was suspended;
 - (d) if the decision of the Court, that goods in question are counterfeit or pirated products, is not delivered to the Customs office in prolonged term, the Customs office will release the goods as soon as the obstacles for which the proceedings had been suspended have ceased;
 - (e) the competent authority in this case is the Customs office and, in the case of disagreement, the Court;
 - (f) customs authorities are competent to enable holder and the importer to inspect the detained goods.

[Follow-up question from the EC]

When does the Act laying down measures to prohibit the release of counterfeit and pirated goods for free circulation enter into force?

The Act laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods will enter into force 1 July 1998.

7. In the case of the importation of goods suspected of being counterfeit trademark goods, do the laws of the Czech Republic provide for the rights and obligations set forth in Articles 52 to 59 of the TRIPS Agreement? Please explain in detail.

Under Section 14, paragraph 3 of Act No. 137/1995 Coll., on trademarks, a customs office upon request of the right holder does not release the commercial goods to free circulation. Under Section 53a of Act No. 35/1965 Coll., on literary, scientific and artistic works ("Copyright Act"), amended by Act No. 86/1996 Coll., upon request of the right holder a customs office suspends the customs procedure for ten working days. In justified cases it is possible to prolong the term for another ten working days; if the importer does not provide evidence showing that goods in question are imported in conformity with this Act, the customs office does not release these goods. See also the reply to question 6.

8. With regard to cases that involve the infringement of intellectual property, could the Government of the Czech Republic provide data on the number of:

- law suits that have been filed including their respective outcome and the average length from the filing of a complaint until the final judgement;
- injunctions that have been issued (as defined in Article 44 of the TRIPS Agreement) and explain how such injunctions are being enforced;
- provisional measures (as defined in Article 50 of the TRIPS Agreement) that have been granted and the average length to obtain such measures (from the request);
- suspensions at the border of counterfeit trademark, pirated copyright goods or in relation to goods where other intellectual property rights are infringed;
- criminal cases including the sentences that have been applied, whether they have been executed and please also explain what kind of infringement of an intellectual property right would be regarded as a violation criminal law;
- seizures and/or destruction of counterfeit trademark and pirated copyright goods.

Furthermore, could the Government of the Czech Republic explain and give practical examples of:

- how the compensation for damages of the infringement of intellectual property rights is calculated (Article 45.1 of the TRIPS Agreement);
- what would be regarded as "expenses of the right holder" which have to be reimbursed pursuant to Article 45.2, first half of the TRIPS Agreement and how they would be calculated;
- whether attorneys fees can be reimbursed and how such fees would be calculated;
- whether Article 45.2, second sentence, of the TRIPS Agreement has been implemented in the Czech Republic and how such "damages" would be calculated?

In 1996, Czech courts issued effective rulings in:

- 78 disputes on infringement of copyrights;

- 113 other disputes under the Copyright Act;
- 84 disputes related to rights to inventions and industrial designs;

The average length of the court proceedings on matters concerning the disputes on infringement of copyrights was about 18 months.

The average length of proceedings on other disputes under the Copyright Act was about 16 months.

The average length of proceedings on rights to inventions and industrial designs was about 4 years.

As to the Penal Code, it recognizes the following intellectual property-related criminal acts:

- violation of rights pertaining to a trademark, business name and protected appellation of origin (Article 150 of the Penal Code)
- violation of industrial property rights (Article 151)
- violation of copyright and neighbouring rights (Article 152).

In the year 1996 altogether 303 persons (including 35 women) were convicted for criminal acts according to Article 150 of the Penal Code by Czech courts. They were sentenced mostly to monetary fines (in 213 cases) and to imprisonment (in 48 cases). Criminal proceedings lasted 113 days on average.

There was no sentence served according to Article 151 of the Penal Code in 1996.

According to Article 152 of the Penal Code altogether 82 persons (including 10 women) were convicted in 1996. They were sentenced mostly to imprisonment (in 32 cases) and to monetary fines (in 33 cases). Criminal proceedings lasted 293 days on average.

Since January up to the end of September 1997 the customs authorities found 31 infringements of author's and trademark rights.

Customs authorities confiscated these products but they can be destroyed only at the cost of the State.

The Penal Code lists the following criminal acts:

The criminal act consisting of a violation of rights pertaining to a trademark, business name, and protected appellation of origin (Article 150 of the Penal Code):

- "(1) Whoever releases products illegally using a trademark the exclusive rights to which belong to another party or a trademark which can be mistaken for the former trademark into circulation shall be punished by a prison term of up to and including two years, or a fine (from Kč 2,000 to Kč 5,000,000), or a forfeiture of merchandise.

- (2) The same punishment shall be meted out to any person who, in order to achieve economic benefits:
 - (a) illegally uses the business name of another party or any name which can be mistaken for the former name; or
 - (b) releases products illegally using a trademark the exclusive rights to which belong to another party or a trademark which can be mistaken for the former trademark into circulation."

The criminal act consisting of a violation of industrial or proprietary rights (Article 151 of the Penal Code):

"Whoever illegally interferes with rights pertaining to a patented (protected) invention, an industrial or utility design, or a semiconductor product topography shall be punished by a prison term of up to and including two years, or a fine (from Kč 2,000 to Kč 5,000,000)."

The criminal act consisting of a violation of copyright (Article 152 of the Penal Code):

- "(1) Whoever illegally disposes of a copyright-protected work or a performance of a performing artist, an audio or video recording, or a radio or television programme that are objects of a right similar to a copyright in a manner that only the author, performing artist, manufacturer of the audio or video recording, the radio or TV company, or another holder of such rights is entitled to, or violates such rights in any other way, shall be punished by a prison term of up to and including two years, or a fine (from Kč 2,000 to Kč 5,000,000), or a forfeiture of merchandise.
- (2) The perpetrator shall be punished by a prison term of six months to five years, or a fine, or a forfeiture of merchandise:
 - (a) if he/she has acquired a considerable benefit as a result of any of the criminal acts referred to in paragraph 1 above, or
 - (b) if the extent of the criminal act he/she has perpetrated is considerable."

Act of the Czech National Council No. 200/1990 Coll. regulates the misdemeanours in the sphere of Culture. Pursuant to Article 32, paragraph 1a) of the cited Act the misdemeanour is committed by a person who without any right and authorization will make use of a copyright-protected work or of a performance of a performing artist and its recordings as well as the radio or television programme.

In conformity with the Article 32 the misdemeanours are dealt with by District Municipal Authorities as per Article 52 of the cited Act.

An injured party can claim the compensation of the damage to property caused as a result of misdemeanour.

Misdemeanour proceedings are usually initiated by organizations of copyright protection licensed for collective administration of copyrights and related rights. Insofar as these organizations claim the compensation of damages they also participate in the proceedings.

The defendant has the right to appeal the decision on misdemeanour in full extent. The injured party may lodge an appeal only in the matter concerning the compensation of damage.

III. REPLIES TO QUESTIONS POSED BY JAPAN

1. Please indicate the "competent authorities" stipulated in Article 51 of the TRIPS Agreement.

In the Czech Republic the Czech Customs Administration is the competent authority.

2. Please explain whether "proceedings leading to a decision on the merits of the case" stipulated in Article 55 of the TRIPS Agreement, are judicial or administrative.

Proceedings regarding the decision whether the goods in question are counterfeit or pirated goods are judicial proceedings.

3. Are there any ways other than the application stipulated in Articles 51 and 52 of the TRIPS Agreement (hereafter referred to as "the Application") which enable a right holder to request the competent authorities to suspend the release of the goods which infringe intellectual property rights?

At present the right holder can apply only in the way mentioned in Articles 51 and 52 of the Agreement.

4. Please explain what term your country regards as "a reasonable period within which the competent authorities shall inform the applicant whether or not they have accepted the Application" stipulated in Article 52 of the TRIPS Agreement.

The Customs Authority informs the right holder as soon as all necessary data are available and all competent customs offices have been informed about the adopted measure; usually he is informed within one week.

5. Please explain the term during which the Application is effective.

The measures are in force for a period of time specified by the right holder in his request.

6. Please explain whether a right holder is obliged to pay any fees to lodge the Application.

At present the applicant does not pay any fees or restitution of costs incurred to the State.

7. Please indicate provisions of laws and ordinances which prescribe the "proceedings leading to a decision on the merits of the case" stipulated in Article 55 of the TRIPS Agreement. And please summarise their contents.

Under Section 14, paragraph 3 of Act No. 137/1995 Coll., on trademarks, a customs office upon request of the right holder does not release the commercial goods to free circulation. Under Section 53a of Act No. 35/1965 Coll., on literary, scientific and artistic works ("Copyright Act"), amended by Act No. 86/1996 Coll., upon request of the right holder a customs office suspends the customs procedure for ten working days. In justified cases it is possible to prolong the term for

another ten working days; if the importer does not provide evidence showing that goods in question are imported in conformity with this Act, the customs office does not release these goods.

8. Please explain the specific procedure, if any, to be applied to the goods which are not evident whether or not they infringe intellectual property rights, in Article 55 of the TRIPS Agreement.

The authority to decide on the review whether the decision on suspension of customs procedure is to be amended, deleted or confirmed as a result of the Court proceedings on the merits, does not exist.

9. Please explain the responsibility that the competent authorities and other related authorities take to the right holders when they fail to suspend the release into free circulation of goods which infringe intellectual property rights with regard to the suspension based on the Application or the Ex Officio Action stipulated in Article 58 of the TRIPS Agreement.

If after having received a request of the right holder the Customs authorities release goods which infringes the rights of the right holder into free circulation and at the same time the customs proceedings had been suspended before the release of the goods they are obliged to compensate the damage incurred by the incorrect procedure or by the incorrect decision. If they are not willing to do so upon the request of the right holder, the amount of the damage incurred shall be decided by the Court. Czech Customs authorities cannot act ex officio.

10. Please explain the responsibility that the competent authorities and other related authorities take to the right holders when they examine goods which infringe intellectual property rights and nevertheless release them into free circulation with regard to the suspension based on the Application or the Ex Officio Action stipulated in Article 58 of the TRIPS Agreement.

If after having received a request of the right holder the Customs authorities release goods which infringes the rights of the right holder into free circulation and at the same time the customs proceedings had been suspended before the release of the goods they are obliged to compensate the damage incurred by the incorrect procedure or by the incorrect decision. If they are not willing to do so upon the request of the right holder, the amount of the damage incurred shall be decided by the Court. The Czech Customs authorities cannot act ex officio (see the answer to question 9).

11. Please explain the responsibility that the competent authorities and other related authorities take to the importers when they suspend the release into free circulation of goods which do not infringe intellectual property rights with regard to the suspension based on the Application or the Ex Officio Action stipulated in Article 58 of the TRIPS Agreement.

Upon request the Czech Customs authorities can suspend customs proceedings for a maximum of thirty days. In this period of time the right holder can apply to the Court to take proceedings regarding the decision whether the goods in question are counterfeit or pirated goods. If the Court decides that the goods in question it are not counterfeit or pirated goods, it determines, upon request of importer, the amount of restitution of damage and the person who will pay it.

12. Is the right holder informed of identities of the importers and consignors when the competent authorities "suspend" the goods which infringe on intellectual property rights or which are suspected to infringe intellectual property rights, as well as the case where the right

holder is informed of identities of the importers and consignors stipulated in Article 57 of the TRIPS Agreement?

The right holder is informed about the addresses of the importer or exporter and consignee only in cases when the Court determines the goods are counterfeit or pirated.

13. Please explain the measures to protect confidential information in the course of the inspection stipulated in Article 57 of the TRIPS Agreement. And please indicate provisions of laws and ordinances which prescribe such measures.

Customs authorities can authorise the right holder to inspect the detained goods for the purpose of justification of the request. By informing the right holder on suspension of customs procedure the Customs Office authorises him to inspect the detained goods in order to identify the differences between the protected goods and the counterfeit or pirated goods. In the case that the goods in question are recognised as counterfeit or pirated goods in conformity with Section 51, paragraph 7 of Act of the Czech National Council No. 13/1993 Coll., (the "Customs Act"), as amended by Act No. 113/1997 Coll., upon request the Customs Office can provide the right holder with information on addresses of consignee, importer or exporter and consignor and on quantity the goods in question. The provision of Section 51, paragraph 7 of the Customs Act states: "Without a prior consent of the person concerned, the customs authorities shall not hand over or make available such documents, data and information to third parties, except in cases where they are allowed to do so under special Regulation or an international Agreement".

14. Please explain the procedures of detentions and seizures to be ordered by the competent authorities based on Articles 51 and 55 of the TRIPS Agreement.

Customs office can secure the goods upon request of the right holder. Customs office can impose the sanction of forfeiture for violation of the customs regulations, except in cases when such action constitutes a criminal offence. In other cases only the Court can impose the sanction of forfeiture.

15. Please explain the procedures to appeal against any decisions ordered by the competent authorities based on Articles 51 and 55 of the TRIPS Agreement.

It is not possible to appeal against the decision of customs office to suspend the customs proceeding.

16. Please explain the basis for calculating the security or equivalent assurance stipulated in Article 53 of the TRIPS Agreement that the competent authorities may require an applicant when they suspend the release into free circulation.

At present the Czech Customs authorities have no competence to ask for a security or an equivalent assurance from the owner, importer or consignee for cases when the goods are released.

17. Please explain who shall pay the cost of detentions based on Article 51 of the TRIPS Agreement or destruction stipulated in Article 59 of the TRIPS Agreement.

At present the applicant does not pay any fees or restitution of costs incurred by the State.

18. Please explain what kind of cases are regarded as "the exceptional circumstances" in which the competent authorities may allow re-exportation of counterfeit trademark goods stipulated in Article 59 of the TRIPS Agreement.

The Czech legislation does not determine what is meant by "exceptional circumstances", as stipulated in the Article 59 of the Agreement.

19. Please indicate names of laws and ordinances and their provisions in which the suspension of the release of goods which infringe intellectual property rights or which are suspected to infringe intellectual property rights is prescribed, as stipulated in Article 51 of the TRIPS Agreement.

Customs proceeding can be suspended in conformity with Section 29 of Act No. 71/1967 Coll., on administrative procedure (Administrative order).

20. Please indicate which intellectual property rights are protected based on the Application by a right holder.

Under Section 14, paragraph 3 of Act No. 137/1995 Coll., on trademarks, trademarks are protected and under Section 53a of Act No. 35/1965 Coll., on literary, scientific and artistic works (the "Copyright Act"), as amended by Act No. 86/1996 Coll., the author's rights and the rights related to author's rights, and rights of performers, producers of phonograms (sound recordings) are protected.

21. Please explain kinds and contents of documents which shall be provided by the applicant to lodge the Application.

The right holder proves his rights by a certificate on registration of a trademark, or by an extract from the register. In the case of infringement of author's right, the importer is obliged to prove that the goods in question are imported or exported in conformity with the Copyright Act. The Customs Office can ask the right holder to provide data on the special quality of goods, on packing and documents enabling the Customs authority to tell the counterfeit or pirated goods from the protected goods, provided that the right holder has such data at his disposal.

22. Please explain the remedies which the judicial authorities order regarding a copyright and other related rights, patents, industrial designs, trademarks and layout-designs (topographies) of integrated circuits, including injunctions, damages, expenses, destruction or other disposal of infringing goods and materials/implements for their production.

Legal sanctions that courts can use against whoever is violating copyrights or industrial and proprietary rights are stipulated in the legal acts dealing with the issues at hand, i.e. copyrights and industrial rights. Essentially, the available legal tools are identical. For example, pursuant to Article 32 of the Copyright Act, the author whose right has been violated is entitled to demand, in particular, that the violation of his/her right be stopped, its consequences eliminated, and an adequate satisfaction provided to him/her. If the violation in question has resulted in a grave non-property injury or detriment, the author is entitled to a financial compensation in case a non-fiscal satisfaction is deemed inadequate. The amount of the financial compensation is determined by the court which, in doing so, takes into account the extent of the injury in question and the circumstances under which the copyright violation occurred. If the author has suffered damage by the threat to or violation of his/her rights, he/she shall be entitled to compensation in accordance with the Civil Code.

Pursuant to Article 75, paragraph 1 of Act No. 527/1990 Coll., on inventions, industrial designs, and rationalization proposals, the damaged party is entitled to seek that the violation be stopped and its consequences remedied. If the violation has resulted in damage, the damaged party is entitled to its compensation, both of the actual damage and of lost profits. If the violation has also resulted in a non-property injury or detriment, the damaged party is entitled to an adequate satisfaction which may also consist in financial compensation. Similar provisions govern other industrial and proprietary rights.

Pursuant to Article 15 of Act No. 137/1995 Coll., on trademarks, the owner of a trademark is entitled to demand that the court issue a ruling forbidding the use of his/her trademark or a trademark that can be mistaken for his/her trademark for similar products or services, and removing any articles marked or labelled in a manner constituting the violation of his rights from the market.

This right applies *mutatis mutandis* to other intellectual property rights (Article 5 of Act No. 159/1973 Coll., Protection of Appellation of Origin of Products, Article 18 of Act No. 529/1991 Coll., Topographies of Semiconductor Products, Article 21 of Act No. 478/1992 Coll., Utility Models, Article 15 of Act No. 137/1995 Coll., Trademarks).

The legal system of the Czech Republic does not yet provide for a court order to destroy goods as per Article 46. Yet there have been occasional and exceptional decisions whereunder goods have been destroyed.

23. Please explain whether the amount of damages which judicial authorities order the person who infringes intellectual property rights to pay the right holder is adequate compensation for the injury the right holder has suffered, and what criteria and the way for calculation to decide the amount for compensation.

The magnitude of damage is determined on a case by case basis. In assessing the damage, the court takes into account all circumstances of the case at hand, and its ruling is based on the principle to the effect that the damage compensation should be fair and adequate for the case in question.

24. Please explain whether the amount of damages which judicial authorities order the person who infringes intellectual property rights to pay the right holder includes investigations expense and appropriate attorney's fees.

The court will grant the compensation for the costs of proceedings, including the legal counsel's fees, to the party that has succeeded in the litigation.

As to "investigation expenses", there is no explicit provision to this effect in the Czech legislation, and there is no unambiguous title for such a compensation. On the other hand, there is nothing in the Czech law that would prevent granting such a compensation. Case law does not yet contain any information enabling such a claim to be assessed.

25. Please describe to what extent the amount of damages have been estimated by courts since 1 January 1996. Please explain whether the amount of damages is adequate compensation of the injury the right holder has suffered, and how such civil procedures are consistent with Article 45 of the TRIPS Agreement.

As to damage compensations, please refer to previous responses. The issue of adequate compensation is approached on a case by case basis (see the response to question 23). The court trial complies with Article 45 of the TRIPS Agreement.

26. Please explain the kinds and amounts of penalties (imprisonment or fines) in criminal cases. Please also explain whether these penalties are consistent with Article 61 of the TRIPS Agreement which requires provisions for a sufficient deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

The Penal Code lists the following criminal acts:

- (a) a violation of rights pertaining to a trademark, business name, and protected mark of origin (Article 150 of the Penal Code), punishable by a prison term of up to and including two years, or a fine (from Kč 2,000 to Kč 5,000,000), or a forfeiture of merchandise;
- (b) a violation of industrial or proprietary rights, punishable by the same prison term and fine as criminal acts falling under Article 150;
- (c) a violation of copyrights (Article 152), punishable by the same prison term and fine as criminal acts falling under Article 150.

If the perpetrator has acquired a considerable benefit as a result of any of the criminal acts mentioned above or if the extent of the criminal act he/she has perpetrated is considerable, the prison term is extended to six months to five years.

The punishments referred to above are deemed consistent with Article 61 of the TRIPS Agreement, including their deterring effect.

IV. REPLIES TO QUESTIONS POSED BY SWITZERLAND

1. Please explain whether international treaties which contain detailed provisions addressed to the (judicial) authorities and not to the State itself are considered as self-executing in your system? If not, when there is a divergence between the intellectual property legislation/practices and the international agreement in your country, does the latter automatically prevail? If not, please explain the means allowing your country to fulfil the international obligations? Please cite the relevant texts or jurisprudence.

Article 10 of the Constitution of the Czech Republic says as follows: "Ratified and promulgated international accords on human rights and fundamental freedoms, to which the Czech Republic has committed itself, are immediately binding and are superior to law".

Consequently the TRIPS Agreement is not an international agreement as defined in Article 10 of the Czech Constitution.

Implementation of the provisions of TRIPS Agreement and consistency of the Czech national legislation with it is assured through the incorporation of this Agreement into Czech domestic laws and regulations.

Czech national implementing legislation on enforcement was notified to the Secretariat in document IP/N/6/CZE/1 of 16 September 1997, and was subject to the review of the Council for TRIPS at its meeting of 17-21 November 1997.

2. Article 55 of the TRIPS Agreement provides that "...in appropriate cases, this time limit [of ten days] may be extended by another ten working days". Is such time extension foreseen in your laws? If yes, please cite the relevant provisions. If not, please explain how an applicant can avail himself of this possibility as provided by the TRIPS Agreement?

Under Section 29, paragraph 1 of Act No. 71/1967 Coll. concerning administrative procedure, the Customs Office shall suspend the proceedings, if proceedings on a preliminary question (Section 40) have been initiated or if a party has been ordered to remove the deficiencies of its application (Section 19, paragraph 3) within a prescribed term.

Under Section 29, paragraph 4 the Customs Office shall resume the proceedings of its own initiative or at the initiative of a party to the proceedings, as soon as the obstacles for which the proceeding has been suspended have ceased and/or as soon as the term specified in paragraph 2 has expired.

The recently submitted draft of the Act laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods, which should enter into force in the first half of the next year, contains more explicit provisions giving an applicant the same time limit as provided by Article 55 of the TRIPS Agreement.

V. REPLIES TO QUESTIONS POSED BY THE UNITED STATES

General obligations

1. Articles 41.1 and 42 of TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement. Please describe the structure of the judicial and administrative³ procedures in the Czech Republic in which parties can enforce their intellectual property rights, at local, provincial and national levels, indicating the jurisdiction of each type of court or administrative body and explaining the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure including each type of court and administrative body.

Pursuant to provisions of the Code of Civil Procedure, disputes related to intellectual property are tried and decided mainly by Provincial (Regional) Courts, but they also partly fall under the competence of District Courts.

The regional courts try and issue rulings in matters, an exhaustive list of which is set forth in the Code of Civil Procedure. Pursuant to Article 9, paragraph 2, letter (b), of the Code of Civil Procedure, Provincial Courts are the first-instance courts in copyright law matters and claims. Pursuant to letter (c) of the same provision, Provincial Courts are also competent in matters pertaining to the origin of items of industrial property, the right to register them for the purpose of their legal protection, co-ownership, and any claims resulting therefrom or violations thereof. Pursuant to paragraph 3, letter (b), indent (rr), Provincial Courts try disputes arising from patents,

³ These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

protected industrial or utility designs, or topographies of semiconductor products as subjects of business activities irrespective of whether the parties in the dispute are businessmen or not. Pursuant to paragraph 3, letter (b), of the same provision, Provincial Courts try disputes listed under indent (ee), i.e. those arising from rights to a business name, trademark or mark of origin, regardless of the fact that these are not business matters in the sense of previous provisions.

All decisions of courts can be reviewed by ordinary and extraordinary means of appeal before High Courts.

Other disputes, such as those arising for example from execution procedure, are tried by District Courts.

In the Czech Republic, review of administrative rulings by courts are guaranteed by a system of administrative judiciary. Competent to examine administrative rulings are courts in general.

Courts examine valid and effective administrative rulings on the basis of a charge (Article 247). In doing so, they examine whether the valid and effective administrative ruling in question is legal. Depending on the outcome of the proceedings, the court can either reject the charge, or cancel the ruling and return the matter at hand to the administrative body for a re-trial and a new ruling. In this respect, the administrative body handling the case is bound by the legal opinion of the court.

2. Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to question 1 and cite the legal authorities establishing those procedures.

The initiation of civil proceedings is identical for both Provincial and District Courts, and the same procedures apply to both Czech and foreign parties.

Pursuant to Article 79, paragraph 1, of the Code of Civil Procedure, the proceedings are initiated on the basis of a proposal for a motion. In addition to general particulars, the proposal must contain the name, occupation, and place of residence of the plaintiff (business name and registered office, if the plaintiff is a legal entity) or his representative(s), a description of facts crucial for the matter at hand, evidence which the plaintiff refers to, and it must clearly indicate what the plaintiff is after.

3. Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 1 that is not required of a national or resident of the Czech Republic and cite the legal authorities providing for those differences.

The Code of Civil Procedure does not contain any special requirements of this kind. However, pursuant to Article 50 of Act No. 97/1963 Coll., on international private and procedural law, foreign nationals are entitled to an exemption from court fees and charges and to having appointed a free legal counsel to protect their interests in court proceedings, if there is reciprocity. Pursuant to Article 51 of the same act, a court, acting upon a proposal for a motion submitted by the other party, may demand that a foreign national seeking a ruling in a property/ownership-related matter deposit a security or caution (*cautio iudicatum solvi*); if he fails to deposit the money by a date set by the court, the latter will suspend the proceedings. The law lists cases in which the court is not allowed to demand such a security.

The provisions of Articles 50 and 51 mentioned above may be applied only if there is no international agreement which the Czech Republic is bound by and which says otherwise.

4. Articles 41.1 and Article 48 of the TRIPS Agreement require establishment of safeguards against abuse of judicial and administrative enforcement procedures, including provision for adequate compensation for injury suffered because of such abuse. Please describe the means available under the law of the Czech Republic to prevent abuse of judicial and administrative procedures or to remedy damages suffered as a result of such abuse and cite the legal authorities for those means.

Insofar as intellectual property rights are concerned, there does not exist any legal basis for adopting decisions along suggested lines.

In the sphere of civil law, there is just one possibility which has not yet been made use of in practice. It consists in a charge pursuant to Article 424 of the Civil Code, according to the provisions of which people who cause a damage by wilfully acting at variance with good manners are also responsible for it.

Naturally, the losing side in the trial is obliged to pay costs of the proceedings.

Depending on circumstances, the charge discussed in this question could be legitimately lodged by the state (if it compensated the damage under Act No. 58/1969 Coll.), or by the owner/holder of the right.

5. Article 41.2 addresses, among other things, the cost of judicial and administrative enforcement proceedings. Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.

The amounts of court fees are laid down in an appendix to Act No. 549/1991 Coll., on court fees, as amended by subsequent legislation.

A fee equal to 4% of the value of the subject matter of the proceedings is charged for the initiation of civil court proceedings. This notwithstanding, the fee shall not drop below or exceed Kč 500 and Kč 500,000, respectively. If the value of the subject matter of the proceedings cannot be determined, a flat fee of Kč 1,000 is paid.

A fee equal to 4% of the value of the subject matter of the proceedings is charged for the initiation of proceedings in business matters. This notwithstanding, the fee shall not drop below or exceed Kč 500 and Kč 1,000,000, respectively. If the value of the subject matter of the proceedings cannot be determined, a flat fee of Kč 5,000 is paid.

A fee equal to Kč 5,000 is charged for the initiation of proceedings in matters arising from rights to a business name, trademark or mark of origin.

The same fees are charged for initiation of appeal proceedings.

6. Article 41.2 also addresses the timeliness of judicial and administrative enforcement proceedings. Please cite to the legal authorities establishing any time limits for judicial and

administrative proceedings and, if it has not already been done, provide copies of the laws or regulations in question.

The Code of Civil Procedure does not contain any specific provision dealing with deadlines by which proceedings in matters pertaining to intellectual property rights should take place. Nevertheless, pursuant to Article 158, paragraph 2, of the Code of Civil Procedure, a written copy of the ruling must be submitted within 30 days of its pronouncement. The Chairman of the Court may extend the term to 90 days.

7. Please explain any provisions in the enforcement system in the Czech Republic that ensure expeditious remedies. In addition, please explain what provisions are available to prevent deliberate delays by the parties to a proceeding and indicate the circumstances in which such provisions will be applied.

Pursuant to Article 6 of the Code of Civil Procedure, the court, in collaboration with all parties concerned, proceeds in a manner to ensure a swift and efficient protection of the rights in question and to establish reliably whatever facts are disputed among the parties.

Procrastination of proceedings by any of the parties concerned is reflected in that party being obliged to pay the costs. Pursuant to Article 147 of the Code of Civil Procedure, the court may order a party in the proceedings or its representative to pay those costs they are responsible for and which would not otherwise been incurred.

8. Article 41.3 of the TRIPS Agreement requires that decisions on the merits of a case preferably be in writing, the better to determined the reasoning on which the decision is based. Please state, with regard to each type of court and administrative body identified in question 1, whether judges or administrative officials must render their decisions in writing and cite the legal authorities requiring such written opinions.

Pursuant to Article 156 of the Code of Civil Procedure, the ruling announcement is always public. Subsequently, the ruling and its rationale must be executed in writing. Pursuant to Article 158, paragraph 3 of the Code of Civil Procedure, a copy of the written ruling is delivered care of the parties or their respective representatives.

9. Article 41.3 also requires that decisions on the merits of a case be based only on evidence in respect of which parties had an opportunity to be heard. Please state, with regard to each type of court and administrative body identified in question 1, what factors may be considered by a judge or administrative official in rendering a decision and cite the legal authorities establishing the basis on which judges and administrative officials may reach decisions.

Court proceedings are open to the general public. The latter may not be let in only for reasons expressly stated in the law. The judge directs the proceedings so that they contribute to a fair ruling, fulfil their educational and preventive purposes, and are conducted in a dignified and uninterrupted manner. Once the proceedings have started, the plaintiff and the defendant present or supplement their respective positions, and the judge present the results of his preparations. The judge controls the course of the proceedings depending on circumstances of the case at hand. In the end, the parties are allowed to summarize their respective proposals, and comment on legal aspects and furnished evidence of the case.

Based on Article 125 of the Code of Civil Procedure, any means whereby the state of affairs can be determined, in particular interrogations of witnesses, opinions of experts, reports and statements of bodies and legal entities, documents, surveys or examinations of parties in the litigation, can be used as evidence. Pursuant to Article 132 of the Code of Civil Procedure, the court assesses the evidence at its discretion, which applies to every piece of evidence separately and to all pieces of evidence from the viewpoint of their mutual relations. In doing so, it carefully takes into account everything that has been established in the course of the proceedings, including the parties' statements.

10. Article 41.4 obligates WTO Members to provide for judicial review of certain judicial and administrative decisions in intellectual property enforcement proceedings. Please describe what legal limitations, if any, are placed upon the ability of a party to an intellectual property enforcement proceeding to have both procedural rulings and final decisions reviewed by a separate judicial authority, and cite the legal authorities providing for such reviews.

Insofar as review of court rulings are concerned, there exists a guaranteed right to appeal against every ruling to a higher-instance court.

If the matter at hand has already been decided by a court of appeal, it is possible to resort, under terms and conditions stipulated by the law, to an extraordinary remedy represented by an appeal to the Supreme Court.

Similarly, it is also possible to submit, under terms and conditions stipulated by the law, a proposal to renew the proceedings, which is also regarded as an extraordinary legal remedy.

As to review of administrative rulings by courts, please refer to the response to question 1.

Civil and administrative procedures and remedies

11. Article 42 requires that defendants be notified of judicial and administrative intellectual property enforcement proceedings brought against them. Please describe the procedures followed by each type of court and administrative body identified in question 1 for notifying defending parties regarding proceeding that have been initiated against them, indicate the information provided regarding the proceeding and cite the legal authorities establishing these procedures.

Pursuant to Article 79, paragraph 3 of the Code of Civil Procedure, the court will serve the motion whereby the proceedings are initiated to the hands of the parties concerned.

12. Article 42 also requires that parties to intellectual property enforcement proceedings must be able to be represented by counsel and must not be subject to overly burdensome requirements to appear personally. Please describe any limitations under the Czech Republic's laws on the ability of a party in such a proceeding to be represented by independent legal counsel and any requirements imposed on the party to appear personally in a proceeding. Please cite the legal authorities providing such limitations and imposing such requirements.

As to the possibility of being represented by an independent legal counsel in court proceedings, there are no restrictions or limitations whatsoever.

The court orders a party (plaintiff or defendant) to appear before the court if his or her personal presence is necessary, for example if he or she is to undergo an interrogation. However,

the court may hold proceedings even in the absence of a party, if the latter knows the proceedings are taking place.

13. Under Article 42, parties are to be entitled to substantiate claims and present relevant evidence. Please describe any limitations under the law of the Czech Republic on a party's ability to substantiate a claim or to present relevant evidence and cite the legal authority providing such limitations.

There are no such limits in our legal system. Based on Article 120, paragraph 1 of the Code of Civil Procedure, the parties are obliged to indicate evidence corroborating their allegations. The court will decide which of the proposed pieces of evidence will be presented. Pursuant to paragraph 3 of the same Article, the court may also opt for evidence other than that proposed by the parties in cases when it becomes obvious in the course of the proceedings that such evidence is necessary to establish the actual state of affairs. If the parties fail to indicate the evidence needed to substantiate their respective claims, the court will establish facts of the case on the basis of the evidence that has been furnished. Pursuant to paragraph 4 of the same Article, the court may also accept as facts of the case identical statements of the parties.

14. Article 42 requires, with one narrow exception, that there be a means to identify and protect confidential information during judicial and administrative intellectual property enforcement proceeding. Please describe the means provided under the law of the Czech Republic for parties to identify and have protected confidential information required to be presented in order to prove their claims and cite the legal authorities providing for such identification and protection.

Pursuant to Article 124 of the Code of Civil Procedure, the furnishing and presentation of evidence must be done in a way preventing state, economic, business, or professional secrets and confidential information from being disclosed, and taking into account the state-recognized obligation of secrecy. This provision shall also apply *mutatis mutandis* to facts established in a manner other than through an interrogation.

15. Article 43.1 of the TRIPS Agreement requires that judicial and administrative officials be able to order a party to an intellectual property enforcement proceeding to produce relevant evidence in that party's control identified by the opposing party when the latter party has presented reasonably available evidence in support of its claims. Please describe how and in what circumstances judges and administrative officials may order production of relevant evidence in intellectual property enforcement proceedings and cite the legal authorities providing for such orders.

The power of the court to order the other party to furnish evidence in its possession stems from Article 120 of the Code of Civil Procedure, which has already been mentioned above. The party indicates evidence substantiating its claims, and states that it is in possession of the adverse party. If the court decides to have the evidence presented, it will order the other party to do so. If that party fails to furnish the evidence even if ordered to do so by the court, the latter will take this into account when assessing the evidence presented in the course of the proceedings.

16. Information ordered to be produced, referred to in question 15, must be protected if it is confidential. Please describe the means provided under the law of the Czech Republic for protecting such information and cite the legal authority providing for such protection, if those means differ from those described in answer to question 14.

See the response to question 14.

17. Article 43.2 provides that, in the event a party refuses to provide information ordered by the judicial or administrative officials, those officials may be authorised to make preliminary and final determinations adverse to that party. Please describe what sanctions may be imposed on a party that refused to provide ordered information and under what may be imposed on a party that refused to provide ordered information and under what circumstances those sanctions are imposed, citing the legal authority for those sanctions.

Pursuant to Article 53 of the Code of Civil Procedure, a disciplinary fine up to and including Kč 50,000 may be levied upon whoever grossly impedes the proceedings by not heeding court orders.

18. Article 44.1 requires that judicial and administrative officials be able to enjoin or otherwise prevent infringing activity by a party, including by preventing the entry of infringing goods into the channels of commerce in their jurisdiction. Please describe authority of the judges and administrative officials identified in question 1 to order parties to stop infringements and to prevent infringing goods from entering the channels of commerce in their jurisdiction immediately after clearance of such goods through customs. In addition, please cite the legal authorities authorising such actions.

Pursuant to Article 15 of Act No. 137/1995 Coll., on trademarks, the owner of a trademark is entitled, *inter alia*, to demand that the court issues a ruling pursuant to which articles marked or labelled in a manner constituting the violation of his rights would be removed from the market. This right applies *mutatis mutandis* to other intellectual property rights (Article 5 of Act No. 159/1973 Coll. - Protection of Appellation of Origin of Products, Article 75 of Act No. 527/1990. Article 32 of Act No. 35/1965 Coll. concerning literary, scientific and artistic works, Article 18 of Act No. 529/1991 Coll. - Topographies of Semiconductor Products, Article 21 of Act No. 478/1992 Coll. - Utility Models).

19. Article 44.2 provides an exception to the requirement in paragraph 1 for government use or use by third parties authorised by the government, limiting the remedy for infringement to payment of adequate remuneration as provided in Article 31(h). Please describe any such limitations on remedies in the laws of the Czech Republic and cite the legal authorities providing for those limitations.

There is no specific provision concerning such limitations. In a case of compulsory licence according to Article 20 of Act No. 527/1990 Coll. the owner of the patent has in accordance with Article 31(h) of the TRIPS Agreement the right to obtain compensation in respect of the value of the licence.

20. Article 45.1 requires that judicial and administrative officials be able to order an infringer to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please describe the authority of the judges and administrative officials identified in question 1 to order a party found to be infringing to pay the right holder damages adequate to compensate for the injury caused by the infringement. Please explain the factors considered in establishing the amount of the compensation and cite the legal authorities authorising such compensation orders.

Pursuant to Article 75, paragraph 1 of Act No. 527/1990 Coll., on inventions, industrial designs, and rationalization proposals, the damaged party is entitled to a compensation of the

damage resulting from a violation of his/her rights. The compensation consists of an amount representing the reduction of the damaged party's property due to the violation in question (actual damage) and an amount representing the profit the damaged party would have achieved had it not been for the violation in question (lost profits). If the violation has also resulted in a non-property injury or detriment, the damaged party is entitled to an adequate satisfaction which may also consist in a financial compensation. Similar provisions govern other industrial and property rights.

Pursuant to Article 15, paragraph 3 of Act No. 137/1995 Coll., on trademarks, the damaged party is entitled to a compensation of the damage resulting from a violation of his/her trademark rights. If the violation has also resulted in a non-property injury or detriment, the damaged party is entitled to an adequate satisfaction which may also consist in the financial compensation.

Pursuant to Article 32 of Act No. 35/1965 Coll. ("Copyright Act"), the author is entitled to compensation of the damage resulting from a violation of or threat to his/her rights. Similarly, the author is also entitled to an adequate satisfaction. If the violation in question has resulted in a grave non-property injury or detriment, the author is entitled to financial compensation in case a non-fiscal satisfaction is deemed inadequate. The amount of the financial compensation is determined by the court which, in doing so, takes into account the extent of the injury in question and the circumstances under which the copyright violation occurred.

21. Article 45.2 requires that judges and administrative officials be authorised to order payment of a right holder's expenses, including legal fees. Please describe the authority of the judges and administrative officials identified in question 1 to order payment of right holder's expenses, the circumstances under which such an order will be given, the factors considered in establishing the expenses, and cite the legal authorities authorising such payments.

The court is authorized to decide which of the parties will pay the expenses, including the legal counsel's fees. The court will grant the compensation of the costs of proceedings, including the legal counsel's fees, to the party that has succeeded in the litigation.

22. Article 46 requires that judges and administrative officials be authorised to order, in certain circumstances, other remedies, including disposal of goods outside commercial channels or destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods. Please describe the additional remedies available under the laws of the Czech Republic, the circumstances in which such authority will be exercised, the factors considered in determining the nature of the remedies provide and cite the legal authorities providing for such remedies.

The legal system of the Czech Republic, more specifically its substantive law, does not yet provide for a court order to destroy goods as per Article 46 of the TRIPS Agreement. Yet there have been occasional and exceptional rulings whereunder goods have been destroyed.

[Follow-up question from the US]

In its answer to question 22, the Czech Republic states that its law "does not yet provide" for the destruction of infringing goods as required by Article 46. Please explain how such goods are disposed of under current law. In addition, please indicate whether the Czech Republic intends to amend its law to comply with Article 46 and, if so, in what time-frame such amendments will be adopted.

Under current substantial laws in civil proceedings a court has no explicitly given possibilities to order destruction of goods and destruction of materials and implements the predominant use of which is the creation of infringing goods.

Nevertheless, when applying Article 32 of the Copyright Law, Article 75 of the Patent Law and Article 15 of the Trademark Law, as well as other related laws pertaining to the industrial property rights, Czech courts are already using the possibilities to give an order to destroy goods, materials and tools. In this case they are referring to a general authorization embodied in the above mentioned laws, allowing them to order disposal of unlawful consequences of infringements. Current judicial practice, described in this paragraph, is responding to the commitments of the Czech Republic stemming from the TRIPS Agreement.

Prepared amendments to current laws regulating intellectual property rights will give a court explicit authority to order destruction of goods, materials and tools. As for the foreseen timing, the adoption of the above mentioned amendments of laws is expected in the year 1999. In our introductory statement we have already given information on a first such proposal concerning comprehensive copyright laws.

Our reply to question 8 from the European Communities and their Member States and to question 55 from the United States, describes the forfeiture of a thing as a punishment. Under paragraph 73 of the Penal Code a court may order confiscation of a thing. If a court did not order forfeiture of a thing it may order such thing to be confiscated if:

- (a) it belongs to an offender who cannot be punished;
- (b) whose punishment a court waived;
- (c) if safety of people and property or other similar public interest it requires.

23. Article 47 provides that WTO Members may authorise judges and administrative officials to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution. Please describe any authority judges and administrative officials have under the laws of the Czech Republic to order infringers to identify for right holders third parties involved in the production and distribution of infringing goods or services and their channels of distribution and describe the circumstances in which this authority would be exercised. Please cite the legal authorities providing for such remedies.

The right to information is derived from Article 14, paragraph 2 of Act No. 137/1995 Coll., on trademarks, and as a such it is directly enforceable in judicial proceedings.

24. Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies only where their actions were taken or intended in good faith in carrying out their responsibilities under the law. Please explain any exemption provided public authorities and officials from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities granting such exemptions.

The essential principle is that persons appearing on behalf of the state in court or administrative proceedings are not held themselves directly responsible for any damage they may cause by their decisions or incorrect official procedures. It is the state which is regarded

responsible in such matters, pursuant to Act No. 58/1969 Coll., regardless of the case at hand (the state is objectively responsible).

Pursuant to Article 57 of Act No. 335/1991 Coll., on courts and judges, it is the state which is responsible for any damage caused by an illicit decision or the use of an incorrect official procedure.

Under the terms and conditions set forth in Act No. 58/1969 Coll., the state can apply a right of recovery against the person who has made the illicit decision or used the incorrect official procedure.

Provisional measures

25. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to prevent an infringement of any intellectual property right. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please identify the provisional measures available to protect intellectual property rights. Please cite the relevant legal authority establishing those provisional remedies.

Pursuant to the Code of Civil Procedure, the court, acting upon a request, may order a provisional measure, if it is necessary to stabilize the situation existing between the plaintiff and the defendant or if there is a concern that the exercise or enforcement of its ruling may be threatened. Insofar as the protection of intellectual property is concerned, it is thus possible, for example, to forbid disposing of certain articles or rights, or to order one of the parties to do, refrain from, or put up with, something. Such a provisional measure can be imposed before or during a trial. No court proceedings or deliberations are needed to impose a provisional measure. A precautionary measure can be ordered and instituted practically immediately, as long as relevant legal requirements have been met.

26. Articles 50.1 and 50.8 require that judicial and administrative authorities have the authority to order prompt and effective provisional remedies to preserve relevant evidence in regard to an alleged infringement. Please identify the provisional measures available to preserve relevant evidence in regard to an alleged infringement and cite the relevant legal authority.

Pursuant to Article 76, paragraph 1 of the Code of Civil Procedure, it is possible, upon request, to safeguard a proof or evidence before the proceedings in the matter at hand commence, if there is a concern that the evidence could not be furnished at all or with great difficulties later. The safeguarding action is taken by the court.

27. Articles 50.2 and 50.8 require Members to authorise judicial and administrative authorities to adopt provisional measures *inaudita altera parte*. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please describe briefly the circumstances in which the judicial and administrative authorities are empowered to adopt provisional measures *inaudita altera parte* and cite the relevant legal authority.

The court is entitled to impose a provisional measure without hearing the other party. In practice, it is a rule rather than an exception that provisional measures are imposed without hearing the adverse party.

28. Articles 50.2 and 50.8 require that judicial authorities and administrative bodies be authorised to grant provisional remedies when a delay is likely to cause "irreparable harm" to the right holder. Please describe briefly what is required by the authorities identified in answers to questions 25, 26 and 27 to establish "irreparable harm" to the right holder.

Czech law does not include the term "irreparable damages", or its definition. In specific cases, the court may come to a conclusion that the situation fits what may be termed as irreparable damages.

29. Articles 50.2 and 50.8 also require that judicial authorities and administrative bodies be authorised to grant provisional remedies when there is a "demonstrable risk of evidence being destroyed". Please describe briefly what factors are considered by the competent authorities in determining when there is a "demonstrable risk of evidence being destroyed."

Here again, the crux of the matter consists in safeguarding proofs and evidence, as described in the reply to question 26 above.

30. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorised to require an applicant to provide evidence to establish with a sufficient degree of certainty that the applicant is the right holder and that infringement has occurred or is imminent. With respect to each intellectual property right defined in Article 1.2 of the TRIPS Agreement, please describe the evidence required by right holders to establish ownership.

The owner of industrial property rights (trademark, patent, industrial design, utility model, topography, appellation of origin) shall prove his/her entitlement to these subjects by showing the patent or the certificates of trademark, industrial design, utility model, topography, appellation of origin registration or by an extract from the Register.

The Czech Copyright Law is based on the principle that only an actual author is the initial owner of copyright, and that owner can thus only be a natural person. According to Article 12 the author is entitled:

- (a) to the protection of his authorship, in particular to the inviolability of his work, and should another person use his work, to having the work used in a manner which does not detract from its value;
- (b) to dispose of his work, in particular to decide about its publication and to authorise its use etc.

A work may be used only upon the author's permission, should it not be permitted directly by the law. The author shall grant his permission to use of the work by contract.

No formal requirements, according to the Berne Convention, are necessary for the protection of authors' rights. There is no copyright registration office in the Czech Republic. The right holder can supply the authorities with the evidence as original work, contracts, permits, authorizations etc.

31. Articles 50.3 and 50.8 require that judicial and administrative authorities be authorised to provide a security or equivalent assurance to protect the defendant. With respect to each intellectual property right identified in Article 1.2 of the TRIPS Agreement, please cite the legal authority establishing a security or equivalent assurance.

See the response to question 3 concerning Article 51 of Act No. 97/1963 Coll., on international private and procedural law.

32. Article 50.4 requires that parties be notified when provisional measures have been adopted *inaudita altera parte*. Please describe briefly the procedures followed by each authority able to adopt such measures for notifying affected parties and state the time within which such notice must take place.

The court will serve its ruling whereby a provisional measure is imposed to all parties concerned, i.e. including those that were not heard in the provisional measure proceedings as soon as possible.

33. Article 50.4 also requires that defendants be afforded a review process to determine whether provisional measures should be modified, confirmed, or revoked. Please describe briefly the procedures a defendant must follow to initiate review proceedings in each of the authorities able to adopt such measures and identify the period within which such proceedings must be initiated.

The ruling whereby a provisional measure is imposed can be appealed within 15 days of the day the ruling is served. The decision insofar as the appeal is concerned is taken by a higher-instance court, which may confirm, change, or cancel the provisional measure in question.

34. Article 50.5 requires that competent authorities be authorised to require applicants to supply other information necessary for the identification of goods concerned by the authority that will execute the provisional measures. Please describe briefly what other information may be required by the authorities and cite the legal authority establishing the basis for this supplemental information.

The court is entitled to demand any information it deems necessary for being able to issue a ruling.

35. Articles 50.6 and 50.8 provide that if proceedings leading to a decision on the merits are not initiated within a reasonable time, provisional remedies granted by competent authorities shall be revoked or otherwise cease to have effect, at the request of the defendant. Please identify the relevant provisions in the law of the Czech Republic authorising the revocation or cessation of provisional measures if review proceedings are not initiated within a reasonable time and specify what constitutes a "reasonable time period" to initiate proceedings.

Pursuant to Article 76, paragraph 3 of the Code of Civil Procedure, the court, when imposing a provisional measure, may order the party that proposed it to submit, by the date it will set, a proposal for a motion to commence the proceedings in the matter at hand. Pursuant to Article 77, paragraph 1, letter (a) the provisional measure will be rendered null and void if the party that proposed it fails to submit, by the date set by the court, a proposal for a motion to commence the proceedings in the matter at hand.

36. Articles 50.7 and 50.8 provide that judicial and administrative authorities shall have the authority to order the applicant to provide the defendant appropriate compensation for any injury caused by the adoption of provisional measures when said measures are revoked, have lapsed, or when it has been determined that there has been no infringement or threat of

infringement. Please describe how the competent authorities determine "appropriate compensation."

The legal system of the Czech Republic does not know such a procedure. However, Article 77, paragraph 3 of the Code of Civil Procedure may provide such a remedy for the defendant. As to third parties, it is possible to refer to Act No. 58/1969 Coll. As far as the determination of the appropriate compensation is concerned, the general principle which should be applied is to compensate the actual damage and lost profits.

Special requirements related to border measures

37. Article 51 of the TRIPS Agreement requires that countries adopt procedures that enable right holders to request suspension of the importation of counterfeit trademarked goods and pirated copyrighted works. Please identify the competent authority in the Czech Republic authorised to accept applications for a request to suspend release of suspected infringing goods and cite the relevant law or regulation governing such authority.

The authorized authority is the Czech Customs Administration.

38. Please describe the procedures a right holder must follow to obtain border protection by the competent authorities, e.g., if there is a formal application that must be submitted to the competent authority, judicial or administrative, and the information required in the request for suspension and cite the law or regulations providing such procedures.

Under Section 14, paragraph 3 of Act No. 137/1995 Coll., on trademarks, a customs office upon request of the right holder does not release the commercial goods to free circulation. Under Section 53a of Act No. 35/1965 Coll., on literary, scientific and artistic works (the "Copyright Act"), amended by Act No. 86/1996 Coll., upon request of the right holder a customs office suspends the customs procedure for ten working days. In justified cases it is possible to prolong the term for another ten working days; if the importer does not provide evidence showing that goods in question are imported in conformity with this Act, the customs office does not release these goods.

39. Please explain whether procedures, permissible under Article 51 of the TRIPS Agreement, are available to stop the export of goods suspected of infringing copyrights and/or trademarks.

As concerns the prevention of export of counterfeit and pirated goods this is regulated by the same provisions as those for their importation (see the answer to question 38).

40. Article 52 of the TRIPS Agreement requires that rights holders wishing to stop importation of counterfeit trademarked goods or pirated copyrighted works present evidence to the competent authorities that there is *prima facie* infringement of their trademark or copyright. Please explain what evidence will constitute *prima facie* infringement in the Czech Republic.

The right holder proves his rights by a certificate on registration of trademark, or by an extract from the register. In the case of infringement of author's right, the importer is obliged to prove that the goods in question are imported or exported in conformity with the Copyright Act.

41. Article 52 also requires that the right holder provide a "sufficiently detailed description of the goods" to be stopped. Please explain what is required of the right holder in the Czech Republic for a description to be "sufficiently detailed."

The Customs Office can ask the right holder to provide data on special quality of goods, on packing, documents enabling the Customs authority to tell the counterfeit or pirated goods from the protected goods, provided that the right holder has such data at his disposal.

42. Article 52 requires that the competent authorities notify the right holder that his application is accepted within a reasonable time. Please explain within what period of time the competent authority responds to a request for suspension of release of goods and, if the application is accepted, the length of time during which enforcement action will be taken.

The Customs Authority informs the right holder as soon as all necessary data are available and all competent customs offices have been informed about the adopted measure; usually he is informed within one week.

43. Article 53.1 requires that the competent authorities have the authority to secure from an applicant a security or equivalent assurance sufficient to protect a defendant and to prevent abuse. Please verify that the competent authorities identified above are empowered to require security or equivalent assurance and provide citations to the provisions of law or regulation that grant them that authority.

At present the Czech Customs authorities have no competence to ask for a security or an equivalent assurance from the applicant in case the goods in question are not counterfeit or pirated goods.

44. Article 53.2 provides that the owner, importer, or consignee of goods involving industrial designs, patents, layout-designs or undisclosed information that have been suspended by customs authorities should be able, in certain circumstances, to have such goods released on payment of security sufficient to protect the right holder from infringement. Please identify what forms of intellectual property, if any, are subject to provisions of Article 53.2 cite to the relevant provisions of law or regulations.

At present the Czech Customs authorities have no competence to ask for a security or an equivalent assurance from the owner, importer or consignee in cases when the goods are released.

45. Article 54 requires that the importer and the applicant be notified promptly of the suspension or release of goods. Please specify the period within which the competent authority is to issue a notice that the release of goods has been suspended.

If the Customs Office decides on suspension of customs procedure, it promptly delivers this decision to the Applicant (Right holder).

46. Article 55 makes it clear that the right holder applying for suspension of infringing goods must initiate a proceeding on the merits in an appropriate forum within a reasonable period of time or the goods will be released. Please identify the fora in which an applicant/party may initiate proceeding on the merits that will allow customs authorities to hold the goods beyond ten working days.

In this case the Customs Office can suspend the customs procedure for a period not exceeding 30 days, if the parties to the proceedings so move on serious grounds. (Section 29, paragraph 2 of Act No. 71/1967 Coll., on administrative procedure (Administrative order)).

47. Article 55 provides that a review is to take place within a reasonable time at the request of the defending party to determine if the suspension measures should be modified, revoked, or confirmed pending the outcome of the proceeding on the merits. Please identify the forum that is authorised to conduct such a review and describe the procedure and cite the applicable law or regulations.

The authority to decide on the review whether the decision on suspension of customs procedure is to be amended, deleted or confirmed under the result of the Court proceedings on merits does not exist.

48. Article 56 requires that the authorities be able to require the applicant to compensate the defending party for any injury caused if the detention of goods was unfounded. Please identify the authorities that can order the applicant to pay the importer, consignee or owner compensation for injury caused by wrongful detention or through the detention of goods released pursuant to Article 55 and cite to the applicable law or regulations.

In this case the Customs office decides on compensation of the owner, consignee or importer and in the case of disagreement the Court.

49. Article 57 requires that the competent authorities be able to authorise the right holder to inspect the detained goods in order to substantiate the claims. Please explain how right holders are provided an opportunity to inspect suspect goods that have been detained by customs authorities.

Customs authorities can authorise the right holder to inspect the detained goods for the purpose of justification of the request. By informing the right holder on suspension of customs procedure the Customs Office authorises him to inspect the detained goods in order to identify the differences between the protected goods and the counterfeit or pirated goods.

50. Article 57 also requires that, where the decision on the merits favours the right holder, the competent authorities also may be given authority to give the right holder information regarding the importer, consignee or consignor. If competent authorities in the Czech Republic can provide information regarding the importer, consignee or consignor to the right holder, please explain how information regarding names and addresses of consignors, importers and consignees and quantities of goods are provided to the applicant after a positive decision of infringement is made, e.g., authorities automatically providing information or by submission of a written request from the right holder, etc. Please cite to the law or regulations providing such authority.

In cases where the goods in question are recognised as counterfeit or pirated goods in conformity with Section 51, paragraph 7 of Act of the Czech National Council No. 13/1993 Coll., the Customs Act, as amended by Act No. 113/1997 Coll., upon request the Customs Office can provide the right holder with information on addresses of consignee, importer or exporter and consignor and on the quantity of the goods in question. The provision of Section 51, paragraph 7 of the Customs Act states "Without a prior consent of the person concerned, the customs authorities shall not hand over or make available such documents, data and information to third parties. except in cases where they are allowed to do so under special Regulation or an international Agreement".

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

The Czech Customs authorities cannot act ex officio.

52. Article 59 identifies the remedies that are to be available, including destruction or disposal of infringing goods outside the stream of commerce. Please explain what the law in the Czech Republic permits regarding the disposition of infringing goods, i.e., does the law allow for destruction, disposal or both. Please cite to the law or regulations providing such authority.

The Czech Customs authorities can destroy only those goods which have been forfeited or confiscated on the basis of violation of customs regulations, in other cases only the Court decides as a result of criminal proceedings.

53. Please identify :

- (a) the competent authority that decides the disposition of the goods, i.e., whether the goods will be destroyed or disposed of outside the stream of commerce; and
- (b) the competent authority that carries out the destruction or disposal of the goods.

The competent administrative authority and the penal Court.

54. Article 60 permits Members to exclude from the provisions for border enforcement small quantities of goods of a non-commercial nature carried by passengers or sent in small consignments. Please describe what constitutes a *de minimis* import that is excluded from the border measures under the law of the Czech Republic.

At present *de minimis* imports are not determined by an Act.

Criminal procedures

55. Article 61 of the TRIPS Agreement requires that Members have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please describe the provisions in the law of the Czech Republic that fulfil that obligation and provide legal citations.

The Penal Code lists the following criminal acts:

The criminal act consisting in a violation of rights pertaining to a trademark, business name, and protected mark of origin (Article 150 of the Penal Code):

- "(1) Whoever releases products illegally using a trademark the exclusive rights to which belong to another party or a trademark which be mistaken for the former trademark

into circulation shall be punished by a prison term of up to and including two years, or a fine (from Kč 2,000 to Kč 5,000,000), or a forfeiture of merchandise;

- (2) The same punishment shall be meted out to any person who, in order to achieve economic benefits;
 - (a) illegally uses the business name of another party or any name which can be mistaken for the former name; or
 - (b) releases products illegally using a trademark the exclusive rights to which belong to another party or a trademark which be mistaken for the former trademark into circulation."

The criminal act consisting in a violation of industrial property rights (Article 151 of the Penal Code):

"Whoever illegally interferes with rights pertaining to a patented (protected) invention, an industrial or utility design, or a semiconductor product topography shall be punished by a prison term of up to and including two years, or a fine (from Kč 2,000 to Kč 5,000,000)."

The criminal act consisting in a violation of copyright (Article 152 of the Penal Code):

- "(1) Whoever illegally disposes of a copyright-protected work or a performance of a performing artist, an audio or video recording, or a radio or television programme that are objects of a right similar to a copyright in a manner that only the author, performing artist, manufacturer of the audio or video recording, the radio or TV company, or another holder of such rights are entitled to, or violates such rights in any other way, shall be punished by a prison term of up to and including two years, or a fine (from Kč 2,000 to Kč 5,000,000), or a forfeiture of merchandise;
- (2) The perpetrator shall be punished by a prison term of six months to five years, or a fine, or a forfeiture of merchandise:
 - (a) if he/she has acquired a considerable benefit as a result of any of the criminal acts referred to in paragraph 1 above; or
 - (b) if the extent of the criminal act he/she has perpetrated is considerable."

Act of the Czech National Council No. 200/1990 Coll. regulates the misdemeanours in the sphere of Culture. Pursuant to Article 32, paragraph 1a) of the cited Act the misdemeanour is committed by a person who without any right and authorization will make use of copyright-protected work or of a performance of a performing artist and its recordings as well as a radio or television programme.

In conformity with Article 32 the misdemeanours are dealt with by District Municipal Authorities as per Article 52 of the cited Act.

An injured party can claim compensation for the damage to property caused as a result of misdemeanour.

Misdemeanour proceedings are usually initiated by organizations of copyright protection licensed for collective administration of copyrights and related rights. Insofar as these organizations claim the compensation of damages they also participate in the proceedings.

The defendant has the right to appeal the decision on misdemeanour in full extent. The injured party may lodge an appeal only in the matter concerning the compensation of damage.

56. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offence. Please explain the provisions in the law of the Czech Republic that provide for such remedies, describe the circumstances in which those remedies would be imposed and provide legal citations.

The perpetration of criminal acts listed in the previous response constitutes the grounds for imposing remedial measures set forth in Article 61 of the TRIPS Agreement, the scope of which is consistent with each set of facts of the case presented above.

57. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please explain the provisions in the law of the Czech Republic that provide for procedures and remedies and provide legal citations.

See the response to question 55.

58. Article 61 requires that criminal penalties be sufficient to provide a deterrent at least for wilful trademark counterfeiting and copyright piracy. Please explain how the penalties provided under the laws of the Czech Republic comply with that obligation.

The sentences the court may serve with respect to the criminal acts listed in the response to question 55 are deemed sufficient and adequate. The Penal Code amendment which the Parliament passed on 24 September, 1997, has increased the upper limits of the prison terms for the criminal acts referred to in Articles 150 and 151 of the Penal Code, which will enhance their deterring effect. The longer prison terms have already been presented in the response to question 55.

[Follow-up questions from the US]

1. Please provide statistical information related to civil copyright, trademark, geographical indications, industrial designs, patents, integrated circuit layout-designs, and trade secret enforcement for each of the years 1996 and 1997, including the number of cases filed; injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.

All statistical data available for the Czech Republic were provided in our responses to the questions from the European Communities and their Member States, particularly to question 8. Updating of these data that we have given for the year 1996 will be available in 1998.

2. Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for each of the years 1996 and 1997, including the number of raids, prosecutions, convictions, and the amount of fines and/or jail terms (including whether the fines were paid and whether the jail term was actually served or was suspended) and any other information establishing that your criminal system operates effectively to deter copyright piracy and trademark counterfeiting.

See the response to follow-up question 1 from the US.

3. The US Government has received reports of illegal plant manufacturing of CDs and CD-ROMs in Czech Republic. Please explain what civil, criminal and administrative penalties have been applied to stop reported illegal plant manufacturing of CDs and CD-ROMs.

As far as substantial law is concerned, the Copyright Act No. 35/1965 Coll., as amended mainly by Act No. 86/1996 Coll. provides adequate protection of computer programs and CDs in a comparative level.

The concrete steps of the Czech Republic concerning amendments to complete the above mentioned copyright regulations, we refer to our introductory statement.

Regarding the enforcement of copyright and neighbouring rights infringement it is necessary to stress that the currently applied mode of criminal proceedings (the continental law) gives an extraordinary preference to the rights of the defendant, which in itself leads to longer proceedings. During the investigation of offences in the area of copyright protection the procrastination occurs due to the necessity of elaboration of expert reports, without which it is impossible to conclude properly criminal proceedings. It generally takes several months (even if the relevant state authorities are willing to speed up the proceedings). See the reply to question 8 from the European Communities and their Member States.

Since the beginning of 1993, the cooperation of the Police of the Czech Republic with entities active in the protection of intellectual property was established, i.e. especially with the Protection Union of Authors, IFPI, the company INTERGRAM, the Antipirate Union and Business Software Alliance CS (BSA CS). Recently cooperation is developing promisingly with the company SOFTWARE + HARDWARE and with the company Hollywood Classic Entertainment, that apart from active cooperation offers its know-how to the enhancement of professional preparedness not only of the staff of the Police of the Czech Republic, but also of the other entities active in this area.

Also the Ministry of Industry and Trade pays attention to the issue of administrative procedures and means that would hinder the violation of copyright, product piracy and trade in forged goods. The Czech Trade Inspection checks e.g. the marking of small businesses and street stalls, in the course of which the submission of the business license is required. In 1996 the Czech Trade Inspection carried out 75,000 checks. Although these checks do not relate directly to the compliance with intellectual property, they facilitate removal of anonymity of the vendors and create preconditions for easier controls by specialized bodies and institutions. All information sources indicate that the sale of illegal CDs in the Czech Republic is not higher than 5%-6% in the year 1996.

A similar, but not so alarming, situation exists in the Czech Republic, in the field of plant manufacturing of CDs. Until now the exact proportion of pirate plant manufacturing on the total manufacturing of CDs was not proved. From the supposed 30,000,000 CDs manufactured in 1996 one third are records of classic music, more than one third is legally authorized through GEMA, SDRM, SABAM, NCB, STEMRA, MCPS etc. and approximately 2 million CDs are in the category of spoken word, folklore, etc.

The total number of criminal offences of copyright violations in the Czech Republic, that have been discovered, investigated and solved by the courts, is relatively very high even in the European context. In 1996, 197 cases of copyright violations were found in the Czech Republic, of

which 195 were solved by finding the actual perpetrator. By these offences the damages in the total amount of Kč 205 million were caused. In the first two months of 1997, 48 cases were discovered, out of which 47 were solved. This information does not provide the total picture, though, because some of the cases are under investigation. According to the statistical statements, the caused damages are not of a catastrophic nature. Nevertheless, the adequate attention is paid to this activity, in particular in view of its growing international significance. Already for 1996 the Government of the Czech Republic included the problem of attacks against the substance of intellectual and industrial property among the so called "safety risks".

Compliance with the legal protection of intellectual property is also part of the "Concept of the property policy of the Government of the Czech Republic". Concerning this issue, in February 1997 the representatives of all concerned bodies met. At the following several meetings with the representatives of the Ministries of Culture, Industry and Trade, Foreign Affairs, Interior, Justice, the Office of Industrial Property, the Police Directorate, the Czech Trade Inspection (CTI) and IFPI, specific proposals were placed - to consider legislation changes in the Act on the Czech Trade Inspection No. 64/1986 Coll., in the Act No. 634/1992 Coll. on the Protection of Consumers etc. The attendees of the meetings, with the aim of devoting systematic attention to the protection of rights to intellectual property initiated the establishing of an informal consulting group, that will include both the representatives of the relevant bodies of the state administration and the non-governmental organizations, i.e. all the entities involved in combating the trade with pirate and foreign goods. Thus, a certain cooperation of state bodies and non-governmental institutions occurs in the safeguarding of the joint proceedings. It needs to be stressed that these proceedings are not only administrative, but also civil and penal ones and cover not only the legislative but implementing spheres too.

4. The US Government has received reports that Czech courts have failed to rule on applications for interlocutory injunctive relief and *ex parte* civil search orders for six months to a year in many cases. In light of these reported delays, please explain what steps the Czech Republic is taking to ensure compliance with Articles 41 and 50 to provide "prompt and effective" provisional measures.

See the response to follow-up question 3 from the US.

5. The US Government has received reports of undue delays by prosecutors and other officials in investigating and commencing criminal complaints. In light of these reports, please explain what steps the Czech Republic is taking to ensure compliance with the requirements of Articles 41.2 and 61 that copyright enforcement procedures "shall not ... entail ... unwarranted delays".

See the response to follow-up question 3 from the US.
