

# **WORLD TRADE ORGANIZATION**

**IP/Q/GAB/1  
IP/Q2/GAB/1  
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**Council for Trade-Related Aspects of  
Intellectual Property Rights**

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## **REVIEW OF LEGISLATION**

### **GABON<sup>1</sup>**

This document reproduces the introductory statement by the delegation of Gabon, the questions addressed to it and the responses given in connection with the review of legislation undertaken at the Council meeting held from 27 to 28 November 2001.<sup>2</sup>

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#### **I. INTRODUCTORY STATEMENT**

On 15 April 1994 in Marrakesh (Morocco), Gabon signed the Agreement Establishing the World Trade Organization (WTO).

The enactment of this Agreement extended to Annex 1C thereto: the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS Agreement.

The TRIPS Agreement imposes numerous requirements on WTO Members, including, in particular, legislative alignment.

This is an often difficult exercise from both a technical and a procedural point of view and Gabon has been endeavouring for many years now to meet this conformity requirement. The developments set out hereunder reflect the existing situation at the legislative and regulatory level, what has been achieved to date and what remains to be done - all of which will enable Gabon to fulfil its commitments under this Agreement.

#### **A. GENERAL**

At international level, Gabon is a signatory of the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property and the Convention Establishing the World Intellectual Property Organization.

More recently, Gabon became a party to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. The Trademark Law Treaty (TLT), which it signed in 1995, is currently being ratified.

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<sup>1</sup> For the relevant laws and regulations notified by Gabon under Article 63.2 of the Agreement, see documents IP/N/1/GAB/1, IP/N/1/GAB/C/1 and IP/N/1/GAB/I/1.

<sup>2</sup> The minutes of the meeting were circulated in document IP/C/M/34.

Gabon will be depositing the instruments of accession to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) with the Director-General of WIPO within the next few days.

At regional level, Gabon is a founding member of the African Intellectual Property Organization (OAPI) and, as such, signed and ratified the Bangui Agreement of 2 March 1977 establishing this organization. This Agreement is the main intellectual property legislation of Gabon and the other OAPI member States.

At domestic level, a national copyright law (Law No. 1/87) has been in force in Gabon since 1987.

It is also satisfying to note that the Criminal Code of 31 May 1963 already provided for a considerable number of measures against counterfeiting and piracy.

The Codes of Civil and Criminal Procedure also contain provisions for action against infringement of intellectual property rights. Emergency measures may be taken by the courts under Article 438 of the Code of Civil Procedure.

This by no means insignificant corpus of legislation has enabled many cases relating in particular to piracy of literary and artistic works and unfair competition to be judged under Gabonese law.

We are, however, persuaded that this is inadequate as far as meeting the specific requirements of the TRIPS Agreement is concerned.

The Gabonese Government has established new provisions to allow for a more comprehensive adaptation of its legislation.

This adaptation process has been completed in certain areas; in others, a revision is envisaged.

## **B. MEASURES ALREADY TAKEN BY THE GABONESE GOVERNMENT TO ADAPT ITS LEGISLATION**

### **1. Participation in the revision of the Bangui Agreement of 2 March 1977**

Gabon played an active role in the revision of the Bangui Agreement of 2 March 1977 designed to bring it into line with the TRIPS Agreement. This revision, which commenced in 1996, was completed in March 1999 when the revised Agreement was signed by Member States' plenipotentiaries. Gabon ratified this Agreement on 27 December 1999.

### **2. Establishment of a National Committee to monitor the TRIPS Agreement**

This Committee encompasses all of the government departments and public services affected by the implementation of the TRIPS Agreement (court administration, customs service, economic police, Ministry of Culture, Ministry of Industry, etc.) and is responsible for proposing for the consideration of the Government all measures required to implement this Agreement in Gabon.

C. ADOPTION OF AN ORDER ESTABLISHING AN ADMINISTRATIVE UNIT FOR THE CONTROL AND REPRESSION OF COUNTERFEITING

The purpose of adopting this Order is twofold:

- Enable the administration to establish the presence of counterfeit goods on the goods and services market, which was not the case two years ago;
- enable it to adopt anti-counterfeiting measures until alignment of the entire domestic legal system has been completed.

3. **Reopening of the National Agency for Artistic and Cultural Promotion (ANPAC)**

The Council of Ministers, at its meeting of 10 May 2001, decided to reopen the National Agency for Artistic and Cultural Promotion (ANPAC). The existence of this body, which ceased to operate in 1982, is provided for in the above-mentioned Law No. 1/87. Its reopening will ensure, as in the past, better protection for authors and their literary, artistic and cultural works.

D. PROVISIONS CURRENTLY IN THE PROCESS OF ENACTMENT

1. **Revision of Law No. 1/87 on the Protection of Literary and Artistic Works in the Gabonese Republic**

Law No. 1/87 on the Protection of Literary and Artistic Works in the Gabonese Republic requires updating. This Law, which affords broad protection to artists, must incorporate certain provisions of the TRIPS Agreement, notably in the case of computer programs, which are henceforth to be protected by copyright.

2. **Framing of a draft intellectual property law to facilitate enforcement procedures**

A drafting committee has been set up to formulate this law. It is responsible for proposing for the consideration of the Government a draft law, the aim of which will be to enable the customs service and court administration to better implement the requirements of Part 3 of the TRIPS Agreement on enforcement of intellectual property rights.

Adoption of this draft law will facilitate the work of judges, customs officials and the economic police.

While the revised Bangui Agreement represents a considerable step forward in the fight against violations of intellectual property rights, it nevertheless remains the case that the responsibility for hearing and determining cases falls to Members' national courts.

The adoption of internal rules of procedure enabling greater efficacy of action is therefore crucial. A revision of the Central African Customs and Economic Union (UDEAC) Customs Code (the pertinent law in Gabon in this area) or the Codes of Civil and Criminal Procedure, which set out general measures applicable to all procedures, is, however, relatively difficult to achieve.

## **II. REPLY TO THE QUESTION POSED BY AUSTRALIA**

### **PATENTS (INCLUDING PLANT VARIETY PROTECTION)**

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

New plant varieties are dealt with in Annex X of the revised Bangui Agreement and are protected by plant variety certificates, not by patents.

## **III. REPLIES TO QUESTIONS POSED BY CANADA**

**1. Please describe how the enforcement obligations (Articles 41 to 61 of the TRIPS Agreement) have been implemented.**

Gabon has ratified the Bangui Agreement, as revised on 24 February 1999 to incorporate the obligations under Articles 41 to 61 of the TRIPS Agreement.

The revised Bangui Agreement came into force on 1 March 2002.

A number of domestic measures have also been taken or initiated, including:

- The establishment of a National Committee to monitor the TRIPS Agreement;
- the creation of an Administrative Unit for the Control and Repression of Counterfeiting;
- the reopening of the National Agency for Artistic and Cultural Promotion (ANPAC), which is in charge of managing literary and artistic works;
- the ongoing review of Law No. 1/87 of 29 July 1987 Instituting Protection for Copyright and Neighbouring Rights, with a view to bringing it into line with the TRIPS Agreement;
- the framing of a draft intellectual property law in order to facilitate intellectual property enforcement procedures.

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

The Gabonese Copyright Law stipulates that works by foreign nationals published in the territory of Gabon shall enjoy the same protection as that afforded to works by Gabonese nationals. Subject to application of the international conventions to which the Gabonese Republic is a party, works not comprised in either of the above-mentioned categories shall not enjoy the protection afforded by this Law unless the country of which the original owner of copyright is a national, or in which he is domiciled, affords equivalent protection to works by Gabonese nationals.

However, neither the integrity nor the authorship of those works shall be affected (Article 77 of Law No. 1/87 of 29 July 1987).

#### **IV. REPLIES TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES**

##### **A. GENERAL PROVISIONS**

**1. Please describe if your legislation includes measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance to your socio-economic and technological development, as mentioned in Article 8 of the TRIPS Agreement. If so, please explain how such measures are consistent with the provisions of the TRIPS Agreement.**

The revised Bangui Agreement provides that each member State may grant ex officio licences in certain areas and subject to certain conditions (Annex I, Article 56; Annex IX, Article 32; and Annex X, Article 36). At the domestic level, specific steps are being taken, in conformity with Article 8 of the TRIPS Agreement.

##### **B. COPYRIGHT AND RELATED RIGHTS**

**2. Please state how your legislation provides for the protection of the exclusive rights of authors in relation to their literary and artistic works, as specified in Article 9 of the TRIPS Agreement, which requires Members to comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto.**

This question is being dealt with as part of the ongoing review of Law No. 1/87 of 29 July 1987 Instituting Protection for Copyright and Neighbouring Rights.

**3. Please describe the protection accorded to authors of computer programs, databases or compilations of data.**

Article 9 of Annex VII (Economic Rights) to the revised Bangui Agreement stipulates that an author shall enjoy the exclusive right to exploit his work in any form whatsoever and to obtain monetary advantage therefrom. Subject to the provisions of Articles 10 to 21, the author of a work shall enjoy, in particular, the exclusive right to perform or authorize the following acts:

- Reproduce his work;
- translate his work;
- adapt, arrange or otherwise transform his work;
- distribute copies of his work to the public by means of sale or any other transfer of ownership or by rental (rental rights shall not apply to the rental of computer programs in those cases where the program itself is not the essential subject-matter of the rental);
- perform his work in public;
- communicate his work (including performance) to the public by broadcasting (or retransmission) or by television;
- communicate his work (including performance or broadcasting) to the public by cable or by any other means.

**4. Please state whether your legislation provides for a rental right and, if so, the works to which it applies.**

Article 9(1)(iv) of Annex VII to the revised Bangui Agreement provides for the rental of works, with the exception of computer programs in cases where the program itself is not the essential subject-matter of the rental. A similar provision is made in Article 48(1)(v) of Annex VII.

**5. Please describe the rights granted to performers, producers of phonograms (sound recordings) and broadcasting organizations under your legislation.**

Gabonese law provides that performers, phonogram producers and broadcasting organizations shall enjoy authorization rights (revised Bangui Agreement, Annex VII, Articles 48, 49 and 50; and Law No. 1/87 of 29 July 1987, Articles 78 to 84).

**6. Please state whether your legislation provides for any limitation or exception in relation to each of the rights described above in accordance with the relevant provisions of the Berne and Rome Conventions and in light of Articles 13 and 14.6 of the TRIPS Agreement.**

The revised Bangui Agreement deals with these matters in Articles 11 to 21 of Annex VII on Limitations on Economic Rights.

**7. Please state the terms of protection of each right described above and the work or subject-matter to which it applies.**

General economic rights in a work are protected during the lifetime of the author and for seventy years after his death. Moral rights are without limit in time (Bangui Agreement, Annex VII, Articles 22 to 27).

**8. Please state how your legislation grants the retroactive protection provided pursuant to Article 18 of the Berne Convention (the obligation of which derives from Article 9 of the TRIPS Agreement) and Article 14.6 of the TRIPS Agreement.**

Article 66 of Annex VII to the Bangui Agreement provides for this.

**9. Please explain whether the *droit de suite* provided for in Article 14<sup>ter</sup> of the Berne Convention is protected in your legislation.**

Yes, Gabonese legislation does protect the *droit de suite* (Article 10, Annex VII, of the Bangui Agreement and Articles 28.5 and 48 of Law No. 1/87).

**C. TRADEMARKS**

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

Article 2 of Annex III to the Bangui Agreement stipulates that "[a]ny visible sign used or intended to be used and capable of distinguishing the goods or services of any enterprise shall be considered a trademark or service mark, including in particular surnames by themselves or in a distinctive form, special, arbitrary or fanciful designations, the characteristic form of a product or its packaging, labels, wrappers, emblems, prints, stamps, seals, vignettes, borders, combinations or arrangements of colours, drawings, reliefs, letters, numbers, devices and pseudonyms.

The trademarks or service marks shall be considered collective marks where the conditions for their use are laid down in rules approved by the competent authority and where they may be used only by enterprises of public character, unions or groups of unions, associations, groups of producers, manufacturers, craftsmen or tradesmen, provided that the latter are officially recognized and have legal personality".

It is further stipulated that "[a] mark may not be validly registered if:

- It is devoid of distinctiveness, notably owing to the fact that it consists of signs or matter constituting the necessary or genetic designation of the product or the composition thereof;
- it is identical to a mark that belongs to another owner and is already registered, or the filing or priority date of which is earlier, and which relates to the same or similar goods or services, or where it so resembles such a mark that it is liable to mislead or confuse;
- it is contrary to public policy, morality or the law;
- it is liable to mislead the public or business circles, notably as to the geographical origin, nature or characteristics of the goods or services in question;
- it reproduces, imitates or incorporates armorial bearings, flags or other emblems, the abbreviated name or acronym or an official sign or hallmark indicating control and warranty of a State or intergovernmental organization established by an international convention, except where the competent authority of that State or of that organization has given its permission".

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

Gabonese legislation affords protection for service marks, trade names and elements of three-dimensional shape (bottles, containers).

There is no provision for the protection of sound and olfactory marks, however. This will be dealt with in the context of the draft law on intellectual property that is currently being drawn up.

**12. Please explain what the requirements of use are, if any, as a condition for a trademark registration. Please explain the definition of use and the conditions of maintenance of a registration in that respect.**

Under Gabonese legislation, trademark rights are acquired solely through registration, not use.

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

Gabonese legislation provides that a trademark may be renewed indefinitely for successive periods of ten years.

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

Any registered mark that has not been used for an uninterrupted period of five years following its registration may be cancelled at the request of any interested party (Annex III, Article 23).

**D. GEOGRAPHICAL INDICATIONS**

**15. Please explain whether or not your trademark registration authority refuses a trademark application if it contains a geographical indication.**

According to Article 2 of Annex VI to the Bangui Agreement, the trademark registration authority may refuse or invalidate the registration of a trademark containing a geographical indication or constituted by such an indication, if the use of said indication in the trademark is liable to mislead the public as to the true place of origin of the products concerned.

Likewise, registration of a geographical indication which, although literally exact with respect to the territory, region or locality from which the products originate, shall also be refused or invalidated if it suggests to the public that the products originate from a different territory.

**16. Please give the definition of a geographical indication in your legislation.**

"Geographical indication" means an indication that serves to identify a product as originating from a territory, a region or a locality within that territory, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin.

**17. Please describe and explain the provisions of your legislation establishing a link, if any, between the characteristics of an indication and its geographical origin.**

Subject to certain provisions, only producers carrying on their activity for commercial purposes in the geographical area specified in the register are entitled to use a registered geographical indication with respect to the products specified in the register, provided that such products possess the essential characteristic qualities specified in the register.

**18. Please describe how additional protection is granted by your legislation to wines and spirits. Please mention other types of products, if any, covered by this additional protection.**

Gabonese legislation contains no specific provision concerning wines and spirits.

Wines and spirits are protected in accordance with the general provisions governing geographical indications.

This question can be dealt with in the context of the draft law on intellectual property currently being drawn up.

**19. Please explain how exceptions under Article 24 of the TRIPS Agreement are used in your jurisdiction. Please provide examples of the use of the exceptions by courts or lists of names considered as generic in your jurisdiction.**

The Bangui Agreement contains no specific provisions concerning the exceptions under Article 24 of the TRIPS Agreement.



E. INDUSTRIAL DESIGNS

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

Technical or functional aspects are not mandatory conditions for the protection of industrial designs in the Gabonese Republic.

Only ornamental and aesthetic features are considered in the protection of industrial designs. Motifs of printed fabrics are not covered by specific provisions and are protected under Annex IV to the Bangui Agreement.

**21. Please explain how your legislation protects right holders of a design against the importation of articles bearing embodied or copied design.**

Registration confers on the creator of an industrial design or his successors in title the exclusive right to exploit the design in question, and hence to prohibit the manufacture, sale or importation of any item which infringes that right.

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

Gabonese law does not provide for the issue of compulsory licences for industrial designs.

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

Industrial designs are registered for a period of five years following the filing date of the application for registration. However, registration may be renewed for a further two consecutive periods of five years on payment of a renewal fee, the amount of which is fixed by regulation.

F. PATENTS

**24. Please describe how your legislation defines the notions of: novelty, inventiveness and industrial application.**

Novelty

- (a) An invention shall be new if it has not been anticipated by prior art;
- (b) prior art shall consist of everything made available to the public, in any place and by any means or method, before the filing date either of the patent application or of a patent application filed abroad and the priority of which has been validly claimed;
- (c) the novelty of an invention shall not be denied if, during the 12 months preceding the date specified in the above paragraph, the invention has been the subject of a disclosure resulting from:
  - an obvious violation committed against the applicant or his predecessor in title;

- the fact that the applicant or his predecessor in title has displayed it at an official or officially recognized international exhibition.

#### Inventiveness

An invention shall be regarded as resulting from an inventive step if, having regard to the prior art, it would not have been obvious to a person having ordinary knowledge and skill in the art on the filing date of the patent application or, if priority has been claimed, on the priority date validly claimed for it.

#### Industrial application

An invention shall be considered industrially applicable if it can be made or used in any kind of industry. The term "industry" shall be understood in its broadest sense; in particular it shall cover handicraft, agriculture, fishery and services.

**25. Please explain whether or not in your legislation, patent or otherwise, patent rights are enjoyed without any exclusions. If exclusions are provided for, please describe in detail how these exclusions are applied in legal as well as practical terms.**

Pursuant to Article 8 of Annex I to the Bangui Agreement, the rights deriving from a patent shall not extend:

- (a) To acts in relation to subject-matter brought onto the market on the territory of a member State by the owner of the patent or with his consent;
- (b) to the use of objects on board foreign aircraft, land vehicles or ships that temporarily or accidentally enter the airspace, territory or waters of a member State;
- (c) to acts in relation to a patented invention that are carried out for experimental purposes in the course of scientific and technical research.

**26. Please explain whether your legislation provides for the exclusion of inventions from patentability based on *ordre public* or morality. If so, please explain the relevant section of your legislation and explain its formulation. Please also explain if it has been applied in practice.**

Article 6(a) of Annex I to the Bangui Agreement stipulates that inventions the exploitation of which is contrary to public policy or morality shall not be patentable.

There are no practical cases to report so far, as no application has been rejected on these grounds.

**27. Please explain whether or not diagnostic, therapeutic and surgical methods are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.**

Pursuant to Article 6(e) of Annex I to the Bangui Agreement, patents shall not be granted for methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods.

**28. Please explain whether or not plants, animals and essentially biological processes are excluded from patentability in your legislation. If so, please explain the relevant section of your legislation and explain its formulation.**

Article 6(c) of Annex I to the Bangui Agreement provides that patents shall not be granted for inventions having as their subject-matter plant varieties, animal species and essentially biological processes for the breeding of plants or animals, other than microbiological processes and the products of such processes.

**29. Please describe how micro-organisms, non-essentially biological processes, microbiological processes and plant varieties are protected in your legislation. Please explain, in this respect, the relevant sections of your legislation.**

Micro-organisms, non-essentially biological processes and microbiological processes and the products from such processes are protected by patents, in accordance with Annex I to the Bangui Agreement.

Plant varieties are protected by a provision of Annex X on Plant Variety Protection.

**30. Please explain how your legislation protects patent right holders against the importation and the offering for sale of a patented invention.**

Subject to the conditions and within the limits specified in Annex I to the Bangui Agreement, a patent confers on its owner the exclusive right to exploit the patented invention and to prohibit any other person from doing so.

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

Pursuant to Annex I to the Bangui Agreement, pharmaceutical and agricultural chemical products do not enjoy patent protection.

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

When a patent is delivered for a process, it covers the products obtained directly by that process (Article 7(b) of Annex I to the Bangui Agreement).

**33. Please explain the additional conditions, if any, in your legislation other than the sufficient disclosure of the invention in Article 29 of the TRIPS Agreement (e.g., submission of justification for access to genetic material or prior informed consent to its use). If such additional conditions exist, please point out the relevant legislation and describe the additional conditions in detail.**

The existing regulations do not provide for any additional conditions other than those requiring the applicant for a patent to draft his application sufficiently clearly and completely so that a person having ordinary knowledge and skill in the art could carry it out (Article 14(d) of Annex I to the Bangui Agreement).

**34. Please describe if your legislation provides for limited exceptions to the exclusive rights conferred by a patent. If so, please make a reference to relevant legislation.**

There are no limited exceptions to the exclusive rights accorded to a patent holder other than non-voluntary licences.

**35. Please explain whether or not your legislation provides for compulsory licensing. If so, please explain in detail the conditions under which a compulsory licence may be granted. In particular, please explain how your national legislation considers individual merits in the authorization of such use.**

Gabonese legislation provides for the granting of compulsory licences under the following conditions:

- Non-voluntary licence for non-working (Article 46);
- non-voluntary licence for a dependent patent (Article 47);
- ex officio licences (Article 56);
- licences of right (Article 57).

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

The applicant for a compulsory licence must submit together with his application proof that he had first contacted the patent holder by registered letter and requested a contractual licence but had been unable to obtain such a licence on reasonable commercial terms and conditions or within a reasonable period of time.

The length of the period of time is set in the regulations under the Bangui Agreement.

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

Under Gabonese law, innovations made to an invention are protected by the certificate of addition. This protection expires with the main patent.

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

Under Article 68 of Annex I to the Bangui Agreement of 24 February 1999, any patent granted or recognized under the Bangui Agreement of 2 March 1977 will remain in force for a period of 20 years as from its filing date.

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

**39. Please describe how your legislation protects topographies.**

Layout-designs of integrated circuits may be protected under Article 2 of Annex IX to the Bangui Agreement if, and to the extent that, they are original within the meaning of Article 3 of that same Annex.

A registration may be applied for only if the layout-design has not yet been commercially exploited or if it has been commercially exploited for two years or less anywhere in the world.

**40. Please explain what protection your national legislation grants to right holders against the unlawful importation, sale or distribution for commercial purposes of topographies including integrated circuits or other articles in which a topography is incorporated, in accordance with Article 36 of the TRIPS Agreement.**

The protection afforded under Article 5 of Annex IX to the Bangui Agreement is independent of whether or not the integrated circuit incorporating the protected layout-design is itself incorporated in an article. Subject to the provisions of Articles 6 and 15 of this Annex, the following acts shall be unlawful when carried out without the authorization of the holder:

- The act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not fulfil the requirement of originality referred to in Article 3;
- the act of importing, selling or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated or an article in which such integrated circuit is incorporated to the extent that it continues to contain a layout-design that is unlawfully reproduced.

**41. Please explain how your legislation provides for the derogation from Article 36 as specified in Article 37 of the TRIPS Agreement where a person has no knowledge or reasonable grounds to know when acquiring an integrated circuit or an article incorporating such an integrated circuit that it contains an unlawful topography.**

Our legislation has implemented provisions concerning this derogation in Article 6 of Annex IX to the Bangui Agreement.

**42. Please state the term of protection granted by your legislation to topographies.**

The protection afforded a layout-design under Article 7 of Annex IX to the Bangui Agreement takes effect:

- On the date of the first commercial exploitation of the layout-design, anywhere in the world, by the holder or with his consent, on condition that an application for protection be filed by the holder with the Ministry responsible for industrial property or with OAPI within a period of at least two years; or
- on the filing date allocated to the application for registration of the layout-design filed by the holder if the layout-design has not been the subject of prior commercial exploitation anywhere in the world.

The protection afforded a layout-design under Annex IX to the Bangui Agreement ceases at the end of the tenth calendar year following the date on which it took effect.

#### H. PROTECTION OF UNDISCLOSED INFORMATION

**43. Please explain whether or not your legislation grants a defined period of time for the protection of undisclosed information. If so, please give the time span.**

Gabonese Legislation does not grant a defined period of time for the protection of undisclosed information.

**44. Please explain how your legislation defines "undisclosed information".**

The Bangui Agreement deals with undisclosed information in Article 6 of Annex VIII relating to unfair competition, which stipulates that information is considered to be "confidential", when:

- In its totality or in the configuration or exact assembly of its elements, it is not generally known to persons belonging to the circles that normally deal with that type of information or is not readily available to them;
- it has a commercial value because it is confidential;
- its lawful holder has taken reasonable precautions, in view of the circumstances, to keep it confidential.

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

This covers confidential data obtained from tests or other confidential data the production of which requires considerable effort and which have been communicated to a competent authority for the purpose of obtaining authorization to market pharmaceutical products or chemical products for agriculture comprising new chemical entities (Article 6(4) of the Bangui Agreement).

#### I. ENFORCEMENT

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

All of the annexes of the revised Bangui Agreement provide for effective action against all infringements of intellectual property rights.

As pertains to patents: Articles 58 et seq. of Annex 1 to the Bangui Agreement provide for the offence of infringement and stipulate penalties. Civil action for damages may be brought following an infringement seizure procedure (Articles 64 and 65).

Other sanctions, such as the confiscation or destruction of the infringing objects or publication of the judgement are also possible (Article 67).

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

The Bangui Agreement envisages mechanisms for appealing against final administrative decisions.

For example, at the request of the owner of the patent or the beneficiary of the non-voluntary licence, the civil court may amend the decision on the grant of the non-voluntary licence where new facts justify such amendment (Article 52.1 of Annex I).

Moreover, appeals from decisions of the Organization concerning restoration shall lie to the Organization's High Commission of Appeal within a period of 30 days from the date of receipt of notice of the decisions (Articles 41.8 of Annex I and 36.6 of Annex II). Article 15 of Annex III also stipulates that if an application is rejected by the organization, the applicant has 60 days in which to appeal against this decision and may file the appeal with the High Commission of Appeal.

Lastly, it should be emphasized that in penal, civil, commercial and administrative matters, Gabonese legislation provides that judicial or administrative decisions of first instance may be challenged in courts of appeal and even in the Supreme Court, which acts as a court of cassation.

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

Articles 16 to 19 of the Code of Civil Procedure governing the production of evidence in civil and commercial cases empower one party to obtain from the other, evidence in his possession, by means of a court injunction, on pain of a fine.

As regards the burden of proof, for the purposes of the civil procedure for violation of the owner's right, Article 66 of Annex I to the Bangui Agreement stipulates that if the subject-matter of the patent is a process for making a product, the judicial authority shall be authorized to order the defendant to prove that the process used to make an identical product is different from the patented process in one of the following situations:

- The product made by the process is new;
- there is a strong possibility of the identical product having been made by means of the process and of the owner of the patent having been unable, in spite of reasonable effort, to establish what process was actually used.

**49. Please quote what provisions of your legislation authorize judges to order a defendant to desist from an infringement.**

Through summary proceedings or direct summons, the judge may order that precautionary measures be taken against any person who infringes another person's intellectual property rights.

These measures are established in Articles 67, 47, 48, 31, 16, 16, 62, 1, 35 and 44 respectively of Annexes I to X to the Bangui Agreement.

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

Through summary proceedings or direct summons, the judge may order that precautionary measures be taken against any person who infringes another person's intellectual property rights.

These measures are established in Articles 67, 47, 48, 31, 16, 16, 62, 1, 35 and 44 respectively of Annexes I-X to the Bangui Agreement.

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

Under Articles 43.2 and 46.2 of Annex III to the Bangui Agreement dealing with marks pertaining to products or services, damages may be awarded, in the event of infringement of their rights, to the owners of the mark, the exclusive licensee and to any other parties to a licence contract by way of compensation for any harm suffered.

Article 58 of Annex I to the Bangui Agreement contains similar provisions.

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

The Bangui Agreement contains provisions in this connection, in particular in Article 67 of Annex I, as pertains to patents, and in Article 43 of Annex III, as pertains to marks.

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

The Bangui Agreement provides for the possibility of bringing actions for damages in the event of abuse by the plaintiff (Articles 64 and 65 of Annex I and Articles 43 and 48 of Annex I to the Bangui Agreement).

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

The provisions relating to infringement seizure in the Bangui Agreement implement Article 50 of the TRIPS Agreement.

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

These are judges, customs officers and members of the judicial police.

**56. Please indicate whether or not procedures are available to suspend the exportation of counterfeit goods.**

This is considered in the draft law on intellectual property now being prepared.

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

This matter is also being covered in the draft law on intellectual property now being prepared.

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

Article 64 of Annex VII of the revised Bangui Agreement indeed contains provisions on the implementation of Article 61 of the TRIPS Agreement. Articles 325 and 326 of Gabon's Criminal Code also provide for and penalize infringement of literary and artistic property rights with a prison sentence of up to two years and a fine of CFAF 1,200,000. Forfeiture is also possible.



## **V. REPLIES TO QUESTIONS POSED BY THE UNITED STATES**

### **A. GENERAL**

**1. Please describe, in relation to each form of intellectual property covered by the TRIPS Agreement, including plant variety protection, the manner in which national treatment and most-favoured-nation treatment are provided to nationals of other WTO Members.**

The revised Bangui Agreement does not establish any discrimination from the standpoint of national treatment and most-favoured-nation treatment (Annex I: Article 13; Annex II: Article 10; Annex III: Article 4; Annex IV: Article 5; Annex V: Article 3; Annex VI: Article 3; Annex VII: Articles 3 and 47; Annex IX: Article 4; Annex X: Article 11).

### **B. COPYRIGHT AND RELATED RIGHTS**

**2. Please explain whether and how the Copyright Law of Gabon complies with Article 9 of the TRIPS Agreement requiring that Members comply with all Articles 1 through 21 of the Berne Convention (1971), except Article 6bis, since Members do not have rights or obligations relating to the latter Article under the TRIPS Agreement.**

Gabonese law fully complies with Article 9 of the TRIPS Agreement since all provisions of Articles 1 to 21 of the Berne Convention have been incorporated in Annex VII (protection of literary and artistic works) to the Bangui Agreement.

**3. Please explain how the Copyright Law of Gabon protects computer programs as literary works and compilations of data, as required by Article 10 of the TRIPS Agreement.**

Article 5, Annex VII, of the Bangui Agreement grants protection to literary and artistic works, hereinafter referred to as "works", constituting original creations of the mind in the literary, artistic or scientific fields, such as:

- (i) Works expressed in writing, including computer programs;
- (ii) lectures, speeches, sermons and other works composed of words and expressed orally;
- (iii) musical works, etc.

**4. Article 11 of the TRIPS Agreement requires that rental rights for computer programs and cinematographic works be available. Please cite the corresponding provision of the Copyright Law of Gabon.**

Gabonese law includes rental rights under the right of distribution, with no limitations whatsoever on computer programs or cinematographic works (Article 9(1)(iv) and (2), Annex VII, of the Bangui Agreement).

**5. Please state the length and terms of protection the Copyright Law of Gabon provides for a work other than a photographic work or a work of applied art and cite the relevant provision of law.**

Copyright is protected during the lifetime of the author and for 70 years after his death (Articles 22 to 27, Annex VII, of the Bangui Agreement).

**6. Please describe the protection the Copyright Law of Gabon provides for performers and the term of the protection.**

Articles 46 to 66 of Annex VII to the Bangui Agreement cover protection of performers and the term of protection afforded to performances is 50 years as from:

- (1) The end of the year of fixation for performances fixed on a phonogram;
- (2) the end of the year in which the performance took place for performances not fixed on phonograms.

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

Gabonese law (Articles 46 to 66, Annex VII, of the Bangui Agreement) grants a phonogram producer the exclusive right to carry out or authorize the following acts:

- (1) The direct or indirect reproduction of his phonogram;
- (2) distribution to the public of copies of his phonogram by sale or by other transfer of ownership or by rental.

**C. TRADEMARKS**

**8. Please describe the subject-matter that can comprise a trademark under the Trademark Law of Gabon.**

Under Article 2, Annex III, of the revised Bangui Agreement, any visible sign used or intended to be used and capable of distinguishing the goods or services of any enterprise shall be considered a trademark or service mark, including in particular surnames by themselves or in a distinctive form, special, arbitrary or fanciful designations, the characteristic form of a product or its packaging, labels, wrappers, emblems, prints, stamps, seals, vignettes, borders, combinations or arrangements of colours, drawings, reliefs, letters, numbers, devices and pseudonyms.

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

The procedure for registering a trademark is described in Articles 8, 9, 10 and 11 of Annex III of the revised Bangui Agreement of 24 February 1999. For the rights conferred by registration of a mark, see Article 7 of the same Annex.

**10. Please provide the length and terms of protection that the Trademark Law of Gabon provides for a trademark.**

With regard to the term of protection of a trademark, Article 19, Annex III, of the Bangui Agreement stipulates that "The registration of a mark shall be valid for only ten years from the filing date of the application for registration; however, the ownership of a mark may be preserved

indefinitely through successive renewals of the registration, which may be effected every ten years". Protection extends to all OAPI member states.

D. GEOGRAPHICAL INDICATORS

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

Protection of geographical indications is provided for in Annex VI to the Bangui Agreement.

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

Article 15 (paragraphs 5 and 6), Annex VI, of the revised Bangui Agreement provides for additional protection for wines and spirits.

E. INDUSTRIAL DESIGNS

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

The procedure for obtaining protection for industrial designs is described in Articles 8 to 11 of Annex IV to the Bangui Agreement.

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

Gabonese law does not contain any specific provisions concerning the protection of textile designs. This matter will be studied in connection with the domestic legislation currently being drafted on industrial property.

F. PATENTS

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

This matter is dealt with in Articles 2 to 6, Annex I, of the Bangui Agreement.

**16. Please describe in detail the rights provided for patent holders under the Patent Law of Gabon and cite the relevant provisions of law.**

The rights conferred on a patent holder are described in Article 7, Annex I, of the Bangui Agreement.

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

Articles 46 to 56, Annex I, of the revised Bangui Agreement describe the conditions for granting non-voluntary licences and ex officio licences.

**18. What term of protection does the Patent Law of Gabon provide for patents? Please describe any provisions for extension of the term of protection and cite the relevant provisions of the law.**

Article 9, Annex I, of the Bangui Agreement states that "The patent shall expire at the end of the 20th calendar year following the filing date of the application, subject to the provisions of Article 40 (forfeiture)".

The Bangui Agreement makes no provision for extending the term of protection.

**G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS**

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

Protection for layout-designs of integrated circuits is defined in Articles 2 to 14, Annex IX, of the revised Bangui Agreement. The term of protection is ten calendar years following the date on which it took effect.

**H. PROTECTION OF UNDISCLOSED INFORMATION**

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

Article 6, Annex VIII, of the Bangui Agreement provides for the protection of confidential information.

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

Articles 1 to 6, Annex VIII, of the Bangui Agreement on unfair competition cover all these issues.

**22. Are other applicants for marketing approval for their own versions of a previously approved pharmaceutical or agricultural chemical products permitted to rely on data submitted by the earlier applicant? If so, how long a period of exclusivity is given the earlier applicant before such reliance becomes possible?**

Article 6 (paragraphs 3 and 4) of Annex VIII of the revised Bangui Agreement deals with this matter.

## I. ENFORCEMENT

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

Each of the annexes of the revised Bangui Agreement provide for effective action against all infringements of intellectual property rights.

With regard to patents, Articles 58 et seq. of Annex I to the Bangui Agreement provide for the offence of infringement and ensure punitive action. A civil claim for damages may be made following infringement seizure proceedings (Articles 64 and 65).

Other sanctions, such as the confiscation or destruction of the infringing objects, publication of the judgement, etc., are also possible (Article 67).

**24. Article 43.1 of the TRIPS Agreement requires that judges be authorized to order production of evidence necessary to substantiate a party's claims where that party has been unable to obtain such evidence from the opposing party. Please describe how the laws or regulations of Gabon provide this authorization, citing the relevant provisions of law or regulation.**

Gabon's Code of Civil Procedure, which regulates civil action, provides for the possibility of judges ordering one party to produce evidence at the request of the other (Article 19).

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

All of the Annexes to the revised Bangui Agreement provide for civil remedies that comply with Article 41.1 of the TRIPS Agreement with regard to damages. Furthermore, Gabon's Civil Code (Article 1,382) establishes that "an infringer shall pay the right holder damages to compensate for the injury which the right holder has suffered".

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

In addition to the Bangui Agreement, which provides for provisional remedies related to infringement seizure, national legislation also provides for protective seizure (Article 54 of the OHADA Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution) or the imposition of a similar precautionary measure by order of the President of the Civil Court (Article 445 of the Code of Civil Procedure).

## J. SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

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

Article 48, Annex III, of the revised Bangui Agreement provides for border enforcement procedures. Articles 62, 63 and 64 of Annex VII on copyright establish the powers of customs officers to enforce industrial property rights at borders.

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

Several of the Annexes to the revised Bangui Agreement provide for border enforcement for all other forms of industrial property rights, cf., Annex I: Article 64; Annex II: Article 47; Annex III: Article 48; Annex IV: Article 31; Annex VII: Articles 61 and 62; Annex IX: Articles 5 and 34; and Annex X: Article 44.

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

The revised Bangui Agreement establishes that the right holder is entitled to initiate the procedure. There are, however, administrative measures which allow the authorities (customs, police, office of the public prosecutor, etc.) to act ex officio.

#### K. CRIMINAL PROCEDURES

**30. Please describe in detail how the laws of Gabon implement Article 61 of the TRIPS Agreement that requires Members to have criminal procedures and penalties, including imprisonment and/or monetary fines sufficient to act as a deterrent, at least for cases of wilful trademark counterfeiting and copyright infringement on a commercial scale. Please cite the relevant provisions of law and regulation.**

Article 64, Annex VII, of the revised Bangui Agreement implements Article 61 of the TRIPS Agreement. Articles 325 and 326 of Gabon's Criminal Code also provide for and penalize infringement of literary and artistic property rights with a prison sentence of up to two years and a fine of CFAF 1,200,000. Forfeiture is also possible.

**31. Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offence. Please describe the provisions in the laws of Gabon that provide for such remedies and describe the circumstances in which those remedies would be imposed, citing the relevant provisions of law or regulation.**

Gabon's Criminal Code provides for and penalizes all cases of infringement of literary and artistic property rights. In addition to imprisonment and fines, the provisional or definitive closure of the establishments used by the infringer may be ordered (Article 325). The Criminal Code also provides for confiscation of the proceeds of the offence.

Moreover, the revised Bangui Agreement provides for the confiscation or destruction of recognized infringing objects (Annex I: Article 67; Annex VII: Article 64; Annex IX: Articles 36, 37 and 38; and Annex X: Article 46).

**32. Article 61 also indicates that Members may provide for criminal procedures and penalties in cases of wilful infringement of other forms of intellectual property. Please describe any provisions of the laws of Gabon that provide for such procedures and remedies, citing the relevant provisions of law or regulation.**

Penalties in the event of aggravating circumstances are laid down in the revised Bangui Agreement, in particular in Article 59 of Annex I, Article 40 of Annex III and Article 26 of Annex IV.

**L. STATISTICAL QUESTIONS**

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

The relevant case law is currently being compiled and will be communicated to the Secretariat in due course.

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

The relevant case law is currently being compiled and will be communicated to the Secretariat in due course.

**VI. REPLY TO THE QUESTION POSED BY JAPAN**

**COPYRIGHT AND RELATED RIGHTS**

**Please explain exceptions or exemptions to national treatment and most-favoured-nation treatment under the Copyright and Neighbouring Rights Law, if any, as permitted in Articles 3 and 4 of the TRIPS Agreement.**

Works by foreign nationals published in the territory of Gabon enjoy the same protection as that afforded to works by Gabonese nationals. Subject to application of the international conventions to which the Gabonese Republic is a party, works not comprised in either of the above-mentioned categories shall not enjoy the protection afforded by the Gabonese Law unless the country of which the original owner of copyright is a national, or in which he is domiciled, affords equivalent protection to works by Gabonese nationals.

However, neither the integrity nor the authorship of those works shall be affected (Article 77 of Law No. 1/87 of 29 July 1987).

Articles 3 and 47 of Annex VII to the Bangui Agreement are also very clear in this regard.

## **VII. REPLIES TO QUESTIONS POSED BY SWITZERLAND**

### **A. PATENTS**

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

Gabonese legislation provides for exceptions relating to certain categories of products. Article 6 of Annex I to the Bangui Agreement stipulates that patents shall not be granted for the following:

- (a) Inventions the exploitation of which is contrary to public policy or morality;
- (b) discoveries, scientific theories and mathematical methods;
- (c) inventions having as their subject-matter plant varieties, animal species and essentially biological processes for the breeding of plants or animals other than microbiological processes and the products of such processes;
- (d) schemes, rules or methods for doing business, performing purely mental acts or playing games;
- (e) methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods;
- (f) mere presentations of information;
- (g) computer programs;
- (h) works of an exclusively ornamental nature;
- (i) literary, architectural and artistic works or any other aesthetic creation.

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

Article 7.3 of Annex I to the Bangui Agreement provides that the working of a patent granted for a product can consist simply of importing that product into the territory. This provision clearly stipulates that the importation of a product is equivalent to the working of a patented invention, as is manufacturing, offering for sale or using that product.

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

Under Gabonese law, the granting of compulsory licences is indeed subject to the conditions set out in Article 31 of the TRIPS Agreement (non-working, dependent patent).

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

Article 66 of Annex I to the Bangui Agreement deals with the burden of proof in the event of process patent litigation and provides that if the subject-matter of the patent is a process for making



the product, the judicial authority may be authorized to order the defendant to prove that the process used to make an identical product is different from the patented process in one of the following situations:

- The product made by the process is new;
- there is a strong probability of the identical product having been made by means of the process and of the owner of the patent having been unable, in spite of reasonable effort, to establish what process was actually used.

B. PROTECTION OF UNDISCLOSED INFORMATION

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

Article 6 of Annex VIII to the Bangui Agreement states that information is considered confidential when:

- In its totality or in the configuration or exact assembly of its elements, it is not generally known to persons belonging to the circles that normally deal with that type of information or is not readily available to them;
- it has commercial value because it is confidential; and
- its lawful holder has taken reasonable precautions, in view of the circumstances, to keep it confidential.

It is also stated that unfair competition shall be considered to comprise any act or practice which, in the course of industrial or commercial activities, constitutes or leads to: dishonest use in commerce of confidential data obtained from tests or other confidential data the production of which requires considerable effort and which have been communicated to a competent authority for the purpose of obtaining authorization to market pharmaceutical products or chemical products for agriculture comprising new chemical entities, or the disclosure of such data, except where necessary to protect the public or unless measures have been taken to ensure that the data are protected against dishonest use in commerce.

On the other hand, the legislation does not specify a defined period of time for such protection.

C. ENFORCEMENT

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

The corrective measures envisaged under our legislation in this regard are the following:

- Damages;
- infringement seizure;
- fines and imprisonment;
- provisional or definitive closure of establishments operated by an infringer;
- confiscation of the proceeds of the offence;
- confiscation or destruction of recognized infringing objects;
- confiscation of the devices or means specifically intended for committing the infringement;
- publication of the judgement at the expense of the infringer.

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

The new initiative foreseen following the revision of the Bangui Agreement is the preparation of the draft law on intellectual property in the Gabonese Republic, which will allow all the national provisions of the TRIPS Agreement to be taken into account.

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