

REVIEW OF LEGISLATION

Questions Posed by the European Communities and their Member States

By means of communications from the Permanent Delegation of the European Commission dated 18 April 2000, the Secretariat has received copies of the following questions addressed to Belize, Malta and Poland.

BELIZE

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 under Article 8 of the TRIPS Agreement. If yes, please explain how such measures are consistent with the provisions 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 1-21 of the Berne Convention and the Appendix to the Berne Convention (1971).

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

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

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

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 the light of Articles 13 and 14.6 of the TRIPS Agreement.

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

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

C. TRADEMARKS

9. Please give the definition of a sign under your national legislation and explain under which conditions it is protectable.

10. Please confirm whether or not services are a protectable subject-matter in your trademark law. Please confirm that signs such as trade names are protectable. Please describe whether elements such as sounds, perfumes and containers are protectable.

11. 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.

12. Please confirm whether or not your legislation permits the registration of trademarks to be indefinitely renewable.

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

D. GEOGRAPHICAL INDICATIONS

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

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

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

17. Please describe whether or not additional protection is granted by your legislation to wines and spirits and if such protection is granted, please describe how. Please mention other types of products, if any, covered by this additional protection.

18. 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.

E. INDUSTRIAL DESIGNS

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

20. Please explain how your legislation protects right holders of a design against importing of articles bearing embodied or copied design.

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

22. Please indicate for which period of time your legislation grants protection for industrial designs.

F. PATENTS

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. Please explain how your legislation protects patent right holders against importing and against offering for sale of a patented invention.

30. Please indicate if your legislation provides for patent product protection of pharmaceutical and agricultural chemical products. If your response is in the affirmative, please indicate the legal reference.

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

32. 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.

33. Please describe if your legislation provides for limited exceptions to the exclusive rights conferred by a patent. If your response is in the affirmative, please make a reference to relevant legislation.

34. 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.

35. 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 of the domestic market of the Member authorizing such use.

36. Please mention if your legislation grants additional protection for innovations after the 20 years of patent protection have lapsed.

37. Please explain how your legislation provides for the enhanced patent protection of patents or patent applications pending on 1 January 1995.

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

G. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

39. Please describe how your legislation protects topographies.

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.

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.

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

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.

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

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

I. ENFORCEMENT

46. See the Checklist of Issues on Enforcement (document IP/C/5).

MALTA

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