

# **WORLD TRADE ORGANIZATION**

RESTRICTED

**IP/C/W/111**

30 September 1998

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

Original: English

## **REVIEW OF LEGISLATION**

### Questions posed by Japan

By means of a communication from the Permanent Mission of Japan, dated 15 September 1998, the Secretariat has received the following questions posed by Japan to Ecuador, Mongolia and Panama.

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## ECUADOR

1. Please explain which article of the Copyright Law of Ecuador provides for the protection of works, phonograms and performances of other WTO Members and which article provides for the exceptions or exemptions from national treatment and most-favoured-nation treatment as permitted in Articles 3 and 4 of the TRIPS Agreement.
2. Please explain whether the Copyright Law of Ecuador protects computer programs, including programs in both source code and object code.
3. Please explain whether the following subject matters are patentable: (1) plants and animals, and (2) plant and animal varieties.
4. Please explain how the obligation under Article 34.1 and 34.2 of the TRIPS Agreement regarding the shift of the burden of proof in civil proceedings for patent infringement related to a process patent is implemented.
5. Please explain the remedies which the judicial authorities order regarding the infringement of copyright and related rights, patents, industrial designs, trademarks and layout-designs (topographies) of integrated circuits, including injunctions, damages, destruction or disposal of infringing goods, materials or implements for their production.
6. Please explain whether the amount of damages which judicial authorities order the person who has infringed 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 are adopted in order to decide the amount for compensation.
7. Please explain whether the amount of damages which judicial authorities order the person who has infringed intellectual property rights to pay the right holder includes investigation expenses and appropriate attorney's fee.
8. Please describe to what extent the amount of damages has been estimated by courts since 1 January 1996. Please also explain whether the amount of damages was adequate compensation for the injury the right holder had suffered, and how such civil procedures were consistent with Article 45 of the TRIPS Agreement.
9. 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.

## MONGOLIA

1. Article 21.1 of the Trademarks, Trade Names Law (1997) provides that profit gained from sale of goods shall be transferred to state ownership, while it is stipulated that the profits gained from the unlawful use of trademarks or trade names are attributable to the holder of the trademarks or trade names. Does the above-mentioned provision comply with Article 45 of the TRIPS Agreement, where the provision of Article 21.1 of the Trademarks, Trade Names Law (1997) in fact denies, to the owner of trademarks or trade names, the opportunity to compensate the damage caused by the unlawful use of trademarks or trade names?

2. With regard to Article 21.2 of the Trademarks, Trade Names Law (1997), please explain specifically what kinds of penalties are imposed on a person who has infringed other's trademark or trade name.
3. With regard to Article 28.2 of the Patent Law (1993), please explain specifically what kinds of penalties are imposed on a person who has infringed other's patent.
4. With regard to Article 28.3 of the Patent Law (1993), please indicate the criteria for deciding the amount of compensation which is paid to a patentee who has suffered from the infringement of his patent.
5. Please explain if Mongolia provides:
  - (i) judicial procedures for civil remedy for the infringement of intellectual property rights; and
  - (ii) border measures against goods infringing intellectual property rights.
6. Please explain whether the following subject matters are patentable: (1) plants and animals, and (2) plant and animal varieties.
7. Please explain how the obligation under Article 34.1 and 34.2 of the TRIPS Agreement regarding the shift of the burden of proof in civil proceedings for patent infringement related to a process patent is implemented.
8. Please explain the remedies which the judicial authorities order regarding the infringement of copyright and related rights, patents, industrial designs, trademarks and layout-designs (topographies) of integrated circuits, including injunctions, damages, destruction or disposal of infringing goods, materials or implements for their production.
9. Please explain whether the amount of damages which judicial authorities order the person who has infringed 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 are adopted in order to decide the amount for compensation.
10. Please explain whether the amount of damages which judicial authorities order the person who has infringed intellectual property rights to pay the right holder includes investigation expenses and appropriate attorney's fees.
11. Please describe to what extent the amount of damages has been estimated by courts since 1 January 1996. Please also explain whether the amount of damages was adequate compensation for the injury the right holder had suffered, and how such civil procedures were consistent with Article 45 of the TRIPS Agreement.
12. 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.

#### PANAMA

1. Please explain which article of the Copyright Law of Panama provides for the protection of works, phonograms and performances of other WTO Members and which article provides for the

exceptions or exemptions from national treatment and most-favoured-nation treatment as permitted in Articles 3 and 4 of the TRIPS Agreement.

2. Please explain whether "computer programs" under Chapter II of Title IV of the Copyright Law of Panama, which provides for the protection of computer programs, include programs in both source code and object code.

3. Please explain whether the producer of phonograms has the rental right of the phonograms under the Copyright Law of Panama.

4. Please explain whether the following subject matters are patentable: (1) plants and animals, and (2) plant and animal varieties.

5. Please explain how the obligation under Article 34.1 and 34.2 of the TRIPS Agreement regarding the shift of the burden of proof in civil proceedings for patent infringement related to a process patent is implemented.

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

7. Please explain whether the amount of damages which judicial authorities order the person who has infringed 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 are adopted in order to decide the amount for compensation.

8. Please explain whether the amount of damages which judicial authorities order the person who has infringed intellectual property rights to pay the right holder includes investigation expenses and appropriate attorney's fees.

9. Please describe to what extent the amount of damages has been estimated by court since 1 January 1996. Please also explain whether the amount of damages was adequate compensation for the injury the right holder had suffered, and how such civil procedures were consistent with Article 45 of the TRIPS Agreement.

10. 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.

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