

# WORLD TRADE ORGANIZATION

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**Working Party on the Accession of Croatia**

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## ACCESSION OF CROATIA

### Transitional Arrangements

The following proposals on transitional periods for the implementation of some of the WTO Agreements have been received from the Republic of Croatia.

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The Marrakesh Agreement Establishing the World Trade Organization and the Multilateral Agreements annexed to it contain transitional periods for delaying the application of some Agreements or some of the provisions of some Agreements. Also, some Agreements contain transitional arrangements for phasing out measures that may not be in conformity with the WTO rules.

Upon accession to the World Trade Organization, the Republic of Croatia will assume obligations and acquire rights under the Agreement Establishing the WTO and under the Multilateral Agreements and Understandings annexed to the WTO Agreement.

After careful examination, the Republic of Croatia is of the view that it will need transitional periods in the following areas:

#### I. IMPLEMENTATION OF THE AGREEMENT ON CUSTOMS VALUATION

##### Transitional Period and Justification

Croatia would avail of the provisions of Article 20 of the Agreement on Customs Valuation to delay the application of the provisions of this Agreement for a period ending on 31 December 2000.

Croatia's existing rules on customs valuation were laid down in Articles 36 to 48 of the Customs Law of the Republic of Croatia and implemented through the Statute on the Conditions and Method of Determining Tariff Bases, both regulations being based on the model inherited from the former Yugoslavia. Consequently, the legal provisions in those regulations have not been in full compliance with the WTO Agreement on Customs Valuation.

Changes are necessary in order to fully adjust the existing Croatian legal provisions on customs valuations to the Agreement on Customs Valuation (provisions of Articles 6, 7, 8, 10, 11, 15 and 16 as well as some others including more interpretative notes).

The changes of the existing aforementioned regulations are a time consuming process. For the preparation of administrative instructions, guidelines, manuals for the application of the rules and training of customs officials Croatia would seek assistance of experts from the WTO, the WCO and from Member countries.

#### Action Plan

Croatia has initiated the procedure for changing its customs valuation rules in order to incorporate all the provisions of the WTO Agreement on Customs Valuation. This will be a time consuming task.

The Customs Law will be amended and this requires a longer parliamentary procedure. Consequently, the Statute on the Conditions and Method of Determining Tariff Bases will be changed and additional administrative instructions, guidelines and manuals must be prepared, which also includes the adjustment of the customs service computer systems.

In order to speed up the process, Croatia is seeking for technical assistance from the WTO experts, the WCO and from member countries in bringing its legislation in full conformity with the Agreement on Customs Valuation and especially with its Article 6 (Computed value method).

With a comprehensive and efficient technical assistance to be given, the process of amending Croatian rules on customs valuation will be achieved until 31 December 2000, at the latest.

## II. AGREEMENT ON TECHNICAL BARRIERS TO TRADE

### Transitional Period, Justification and Action Plan

The Republic of Croatia seeks for a time-limited delay for the application of some provisions of the Agreement on Technical Barriers to Trade for a period of three years as from the date of Croatia's accession to the WTO.

The time period for technical harmonization of Croatian technical regulations and standards with the international rules and international standards is estimated to be five years.

However, Croatia would appreciate a three year transitional period as from the date of its accession to the WTO for the full application of the Agreement on Technical Barriers to Trade in order to set up a TBT inquiry point for standards, technical regulations and conformity assessment procedures and to enable it to work.

For the same reason, Croatia would require technical assistance from the WTO member countries in the entire field of technical harmonization.

## III. AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES

### Transitional period and Justification

Legal provisions on sanitary and phytosanitary measures (Laws and Regulations) in Croatia have been adopted in accordance with the provisions and principles of the International Plant Protection Organization and with the Recommendations of the European and Mediterranean Plant Protection Organization. Veterinary legislation was continuously adjusted to international standards, particularly to those established by the Office International des Epizooties (O.I.E) and the Codex Alimentarius.

However, due to the lack of financial means and not fully developed technical infrastructure, Croatia would avail of the provisions of the Article 14 of the WTO Agreement on Sanitary and Phytosanitary measures to delay the application of the provisions of this Agreement for a period of two years from the date of Croatia's accession to the WTO, in order to bring its legislation in full conformity with the WTO rules.

#### Action Plan

During the transitional period, Croatia needs to restructure the existing services in charge of plant protection and other sanitary measures. Croatia will establish a technical infrastructure necessary to bring its legislation in full conformity with the WTO requirements.

In addition, under the auspices of the Veterinary Directorate of the Ministry of Agriculture and Forestry, a new unit will be create with a sole task of adjusting phytosanitary and veterinary legislation of Croatia to the requirements of the Agreement on Sanitary and Phytosanitary measures.

In doing so, Croatia would avail of the provisions of Article 9 of the Agreement on Sanitary and Phytosanitary measures and seek for technical assistance WTO experts and from member countries.

#### IV. IMPLEMENTATION OF THE TRIPS AGREEMENT

##### Transitional Period

Croatia would propose the transitional period up to 30 June 1999 within which the complete harmonization of the existing legislative with the TRIPS Agreement is to be achieved.

##### Justification of the Proposal Concerning the Transitional Period

###### 1. The present situation

###### (a) General

###### (i) Competent State Administration Authorities

The State Intellectual Property Office is competent for the grant of industrial property rights (patents, trade and service marks, industrial designs - models and designs, and geographical indications of products origin), and since 7 November 1996, for the copyright and related rights.

The Ministry of Agriculture and Forestry is competent for the protection of new plant varieties.

###### (ii) Membership in International Conventions

The Republic of Croatia is a party to the following Conventions in the field of intellectual property:

- Convention Establishing the World Intellectual Property Organization;
- Paris Convention for the Protection of Industrial Property;
- Madrid Agreement Concerning the International Registration of Marks;
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks;
- Locarno Agreement Establishing an International Classification for Industrial Designs;
- Berne Convention for the Protection of Literary and Artistic Works, Paris Act 1971.

- Brussels Convention Relating to the Distribution of Programme - Carrying Signals Transmitted by Satellite;
- Universal Copyright Convention, 1952 and 1971.

The Republic of Croatia signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, in December 1997.

The accession of the Republic of Croatia to the Patent Cooperation Treaty is in final phase, i.e, its adoption by the Parliament is expected on the Session scheduled for January 1998.

The Republic of Croatia is bound by the reservation relating to Article 8 of the Berne Convention.

The Republic of Croatia is not a party to the Rome Convention nor to the Treaty on Intellectual Property in Respect of Integrated Circuits.

(iii) National Treatment

Foreign nationals shall enjoy in the Republic of Croatia national treatment prescribed by the provisions of the quoted Conventions, or arising from the application of the principle of reciprocity.

The principle of reciprocity shall be presumed until proved to the contrary.

(iv) Most Favoured Nation Treatment

Most favoured nation treatment has not been applied so far.

(b) Standards Concerning the Availability, Scope and Use of Intellectual Property Rights

(i) Copyright and Related Rights

Copyright and related rights have been regulated by the Copyright Law which, as can be seen from the tabular representation, doesn't comply with Articles 9, 11 and 14 of the TRIPS Agreement.

(ii) Trademarks, Geographical Indications, Industrial Design (Models and Designs), Patents

Trademarks, geographical indications, industrial designs and patents are regulated by the Industrial Property Law.

The mentioned Law does not fulfil completely the requirements of the TRIPS Agreement. Articles not fulfilling the TRIPS requirements are expressly specified in the tabular representation.

(iii) New Plant Varieties

New plant varieties enjoy the sui generis protection prescribed by the Law on the Protection of New Plant Varieties, which has been in force since December 1997.

(iv) Topographies (Lay-Out Designs) of Integrated Circuits

Provisions on the protection of the topographies of integrated circuits do not exist.

(v) Protection of Undisclosed Information

Basic provisions are contained in the Law on the Protection of Data Secrecy. Certain provisions concerning the protection of data secrecy are provided by the Law on General Administrative Procedure, Law on Civil Servants and Employees, Law on Labour, Law on Trade and the Law on Trade Associations.

The Law on Drugs and Medical Products prescribes that the data and documents relating to pharmaceutical and medical products shall be treated as a business secret.

(vi) Control of Anti-Competitive Practices in Contractual Licenses

The basic provisions on obligatory relations are contained in the Law on Obligatory Relations which regulates also the contractual licenses.

The Industrial Property Law contains the provision according to which any contractual clause imposing on the licensee limitations not arising from the assigned right or not necessary for the maintenance of such right shall be considered null and void. The annulment shall be decided by the competent court in the civil procedures.

(c) Enforcement of Intellectual Property Rights

(i) Civil and Administrative Procedures and Legal Remedies

Civil procedure and legal remedies are regulated by the Law on Civil Procedure.

Substantive provisions concerning the civil protection are contained in the Copyright Law, Industrial Property Law, Law on the Protection of New Plant Varieties, and the Law on Obligatory Relations, which contains general rules on the compensation of damages.

(ii) Provisional Measures

Provisional measures shall be ordered according to the Law on Enforcement that contains general rules on provisional measures.

(iii) Border Measures

The existing customs provisions doesn't provide for the special customs measures nor for the procedures for the enforcement thereof.

(iv) Criminal Procedures

The criminal procedure shall be applied in accordance with the Law on Criminal Procedure.

Provisions concerning penalties for the infringement of intellectual property rights are contained in the Penal Law.

New Penal Law and new Law on Criminal Procedure have been in force since 1 January 1998.

(d) Acquisition and Maintenance of Intellectual Property Rights and Related Inter-partes Procedures

- (i) The copyright protection shall not be subject to any registration procedure.
- (ii) Provisions contained in the Industrial Property Law and in the Regulations concerning the procedures for the grant of patents, registration of marks and industrial designs shall be applied to the procedures for the acquisition of patents, trademarks and industrial designs provided by the State Intellectual Property Office.
- (iii) The protection of new plant varieties shall be acquired in the procedure prescribed by the Law on the Protection of New Plant Varieties provided by the Ministry of Agriculture.
- (iv) To all matters not expressly regulated by the mentioned Industrial Property Law or the Law on the Protection of New Plant Varieties, provisions of the Law on General Administrative Procedure shall be applied.
- (v) Against decision taken by the Ministry of Agriculture there shall not be any civil action brought, but an administrative dispute may be instituted.

The administrative dispute shall be governed by the provisions of the Law on Administrative Disputes.

2. The Plan of Activities Aimed at the Harmonization of the Existing Legislation with the TRIPS Provisions

(a) Activities to be Performed in the Course of 1998

The following activities are planned for 1998:

- (i) Termination (denunciation) of the reservation in respect of Article 8 of the Berne Convention.
- (ii) Accession to the Rome Convention.
- (iii) Entry into force of the Law on Modifications and Amendments of the Copyright Law, prepared in the course of 1997, and completely harmonized with the TRIPS provisions.

(Following that Republic of Croatia intends to start with the drawing of the new Law on Copyright and Related Rights in the course of 1999)

- (iv) Entry into force of the new Patent Law, Trademark Law, Law on Geographical Indications and Appellations of Origin and the Law on Industrial Designs, prepared in the course of 1997 and which are just being submitted to competent authorities including WIPO, Max-Planck Institute, etc., for international review.

(In the course of 1998 and 1999 the Republic of Croatia intends to accede to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, to the Madrid Protocol and to the Hague Agreement).

(b) Activities Planned for the Beginning of 1999

It is planned for the beginning of 1999:

- (i) Membership of the Republic of Croatia in the Treaty on Intellectual Property in Respect of Integrated Circuits;
- (ii) Drawing and entry into force of the Law on the Layout-Designs of Integrated Circuits harmonized with the provisions of the mentioned Law and TRIPS;
- (iii) Enactment of Customs Regulations which will enable the application of customs measures in compliance with the TRIPS requirements;

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

IN CONTEXT OF CROATIAN EXISTING AND FUTURE LEGISLATION

STATUS: 10 JANUARY 1998

Parts	Sections	Articles	Compliance already existing pursuant to the laws in force		Compliance to be achieved pursuant to the laws whose preparation:	
			YES (indication of app. law)	NO (indication of the reason)	is in course and to be adopted at the end 1998/beg.1999	is to be started at the end 1998/beg.1999
1	2	3	4	5	6	7
AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS						
PART I GENERAL PROVISIONS AND BASIC PRINCIPLES		Article 1			RC	ICT
		Article 2		NO (2.1)		
		Article 3				
		Article 4		NO (4.1)		
		Article 5				
		Article 6				
		Article 7				
		Article 8				



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			YES (indication of app. law)	NO (indication of the reason)	is in course and to be adopted at the end 1998/beg.1999	is to be started at the end 1998/beg.1999
PART II STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS	Section 1: COPYRIGHT AND RELATED RIGHTS	Article 9		NO (9.1.; 9.2.)	MACL	NCL
		Article 10	YES (CL)			
		Article 11		NO (11.1.)	MACL	
		Article 12	YES (CL)			
		Article 13	YES (CL)			
		Article 14		NO (14.1.;14.2.;14.3.)	MACL	
	Section 2: TRADEMARKS	Article 15	YES (IPL)			
		Article 16		NO (16.1.)	NTL	
		Article 17		NO (17.2.)	NTL	
		Article 18	YES (IPL)			
		Article 19	YES (IPL)			
		Article 20	YES (IPL)			
		Article 21		NO (21.1.)	NTL	
	Section 3: GEOGRAPHICAL ...	Article 22-24		NO (221.)	NLGI	
	Section 4: INDUSTRIAL DESIGN	Article 25-36	YES (IPL)			
	Section 5: PATENTS	Article 27	YES (IPL)			
		Article 28		NO (28.1.)	NPL	
		Article 29	YES (IPL)			
		Article 30	YES (IPL)			
		Article 31		NO (31.1.)	NPL	
		Article 32	YES (IPL)			
Article 33		YES (IPL)				
Section 6: LAYOUT- DESIGNS ...	Article 35-38		NO (35.1.)	NPL	NLIC	

Parts	Sections	Articles	Compliance already existing pursuant to the laws in force		Compliance to be achieved pursuant to the laws whose preparation:	
			YES (indication of app. law)	NO (indication of the reason)	is in course and to be adopted at the end 1998/beg.1999	is to be started at the end 1998/beg.1999
	Section 7: PROTECTION OF ...	Article 39	YES (LPDS)			
	Section 8: CONTROL OF ...	Article 40	YES (IPL, LO)			
PART III ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS	Section 1: GENERAL OBLIGATIONS	Article 41	YES (LCP)			
	Section 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES	Article 42-49	YES (LCP) (IPL, CL,LPPV, LO)			
	Section 3: PROVISIONAL MEASURES	Article 50	YES (LE)			
	Section 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES	Article 51-60		NO (51.1.)	NL, MACL	CR
	Section 5: CRIMINAL PROCEDURES	Article 61	YES (LPP, PL)			
PART IV ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER- PARTES PROCEDURES		Article 62	YES (IPL, LPPV, LAP, LAD)			

Parts	Sections	Articles	Compliance already existing pursuant to the laws in force		Compliance to be achieved pursuant to the laws whose preparation:	
			YES (indication of app. law)	NO (indication of the reason)	is in course and to be adopted at the end 1998/beg.1999	is to be started at the end 1998/beg.1999
PART V DISPUTE PREVENTION AND SETTLEMENT		Article 63-64				
PART VI TRANSITIONAL ARRANGEMENTS		Article 65-67	-			
PART VII INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS		Article 68-73	-			

LEGEND (KEY)

CL	Copyright Law	OGFY <sup>1</sup> 19/78; 24/86; 21/90	NN <sup>2</sup> 53/91; 58/93
MACL	Modified and Amended Copyright Law		
NCL	New Copyright Law		
IPL	Industrial Property Law	OGFY 34/81; 3/90; 20/90	NN 53/91; 19/92; 61/92
NTL	New Trademark Law		
NLGI	New Law on Geographical Indications		
NPL	New Patent Law		
NLIC	New Law on Layout-Designs of Integrated Circuits		
LPDS	Law on the Protection of Data Secrecy		NN 108/96
LO	Law on Obligatory Relations	OGFY 29/78	NN 53/91; 73/91; 111/93; 3/94; 107/95; 7/96
LCP	Law on Civil Procedure	OGFY 4/77	NN 53/91; 91/92
LPPV	Law on the Protection of Plant Varieties		NN 131/97
LE	Law on Enforcement		NN 57/96
CR	Customs Regulations		
LPP	Law on Penal Procedure		NN 110/97
PL	Penal Law		NN 110/97
LAP	Law on General Administrative Procedure	OGFY 47/86,	NN 53/91
LAD	Law on Administrative Disputes	OGFY 4/77	NN 53/91; 9/92; 77/92

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<sup>1</sup> Official Gazette of Former Yugoslavia.

<sup>2</sup> Official Gazette of the Republic of Croatia.

## APPENDIX

### INDICATION OF THE REASONS

- 2.1 Croatia has not yet been party to the Rome Convention nor to the Treaty on Intellectual Property in Respect of Integrated Circuits.
  - 4.1. Most-Favoured-Nation Treatment has not been applied for the time being.
  - 9.1 Because of the reservation concerning Article 8, of the Berne Convention.
  - 9.2 The present Copyright Law provides for the legal and obligatory licenses in respect of the works enjoying protection according to the Berne and Universal Conventions.
  - 11.1 The rental right is not expressly provided for. such right is derived from the applicable right of distribution.
  - 14.1 The present Law does not provide for the special right of the producers of phonograms.
  - 14.2 The present Law does not provide for the special right of the broadcasting organizations.
  - 14.3 The duration of the economic rights of performers is 20 years.
  - 16.1 The present Industrial Property Law does not provide for the express provision regulating the well-known mark in accordance with the requirements arising from Article 16, item 2 and 3 of the TRIPS Agreement.
  - 17.1 The exceptions to the rights conferred by a trademark are not provided for by the present Industrial Property Law.
  - 21.1 According to Article 133 of the Industrial Property Law the assignment of a trademark is allowed only with the transfer of technology to which the trademark belongs.
  - 22.1 In the present Law there is no provision on additional protection of geographical indications for wines and spirits.
  - 28.1 The existing provisions of the Law (Articles 44 and 45) does not entirely comply with Article 28 of the TRIPS Agreement.
  - 31.1 The existing provisions of the Law (Articles 139-145) does not entirely comply with Article 31 of the TRIPS Agreement.
  - 34.1 The present Industrial Property Law (Article 117, item 3) provides for the requirement contained in Article 34 of the TRIPS Agreement, only when the subject matter of the patent protection is the procedure for the production of a new substance.
  - 35.1 The existing Industrial Property Law does not contain provisions on the protection of layout-designs of integrated circuits.
  - 51.1 The present Customs Law does not provide for the provisions on the border measures, nor for the border procedures preventing the infringement of intellectual property rights. Such provisions are not provided for by the existing Industrial Property Law, nor by the Copyright Law.
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