

ACCESSION OF UKRAINE

Memorandum
on the Implementation of TRIPS

The Governmental Commission of Ukraine's accession to the WTO has submitted the following information regarding Trade-related Intellectual Property Rights (TRIPS) with the request that it be circulated to members of the Working Party.

Ukraine continues to effectively improve its intellectual property protection system and harmonize it with TRIPS requirements in order to accede to the WTO.

The national legislation of Ukraine on intellectual property is very diversified and covers all of the generally known types of intellectual property. Its main provisions are contained in the following legislative acts and international agreements (the year of coming into force in Ukraine is given in parentheses):

- Constitution of Ukraine (1996);
- Civil Code of the Ukrainian SSR (1964);
- Civil Procedural Code of Ukraine (1992);
- Arbitration Procedural Code of Ukraine (1992);
- Code on Administrative Violations of Ukraine (1985);
- Criminal Code of Ukraine (1961);
- Customs Code of Ukraine (1992);
- Law of Ukraine "On the Protection of Rights to Plant Varieties" (1993);
- Law of Ukraine "On Copyright and Related Rights" (1994);
- Law of Ukraine "On the Protection of Rights to Inventions and Utility Models" (1994);
- Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" (1994);
- Law of Ukraine "On the Protection of Rights to Industrial Designs" (1994);
- Law of Ukraine "On the Protection of Rights to Layout Designs of Integrated Circuits" (1997);
- Law of Ukraine "On the Protection against Unfair Competition" (1997);
- Law of Ukraine "On the Protection of Indications of Origin of Goods" (1999);
- Law of Ukraine "On Distribution of Audiovisual Works and Phonogram Samples" (2000);
- Law of Ukraine "On the Protection of Economic Competition" (2001).
- Convention establishing the World Intellectual Property Organization (1970);
- World Copyright Convention (1994);
- Paris Convention for the Protection of Industrial Property (Stockholm Act) (1991);

- Madrid Agreement Concerning the International Registration of Marks (Stockholm Act), 1967, as amended in 1979 (1991);
- Patent Cooperation Treaty, 1970, as amended in 1979 and modified in 1984 (1991);
- International Agreement on the Protection of New Plant Varieties, 1961, as amended in 1972 and 1978 (1995);
- Trademark Law Treaty, 1994 (1996);
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977, as modified in 1980 (1997);
- Berne Convention for the Protection of Literary and Artistic Works (Paris Act), 1971 (1999);
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971 (1999);
- Protocol to the Madrid Agreement Concerning the International Registration of Marks (Stockholm Act), 1967, as amended in 1979 (2000);
- Nice Agreement on the International Classification of Goods and Services for the Registration of Marks (Geneva, 1897, as amended in 1979) (2000).

The Ukrainian legislation implements most of TRIPS provisions.

However, the following should be observed:

Ukraine's legislation does not stipulate provisional measures *inaudita altera parte* required in TRIPS, part III, section 3. Moreover, the Arbitration Procedural Code (part II) requires pre-judicial settlement measures. Such a requirement is inconsistent with TRIPS.

Border measures provided for in TRIPS, part III, section 4, are not required by the Ukrainian legislation.

Criminal remedies do not apply in cases of willful falsification of trademarks and counterfeiting on a commercial scale. TRIPS, part III, section 5, requires such remedies.

Some TRIPS requirements for standards which determine intellectual property rights are not implemented, i. e.:

- Article 16, paragraphs 1 and 3;
- Article 17;
- Article 22, paragraph 1;
- Article 25, paragraph 1;
- Article 26, paragraph 1;
- Article 34;
- Article 40, paragraph 3;
- Article 62, paragraph 2, etc.

Many of these deficiencies will be eliminated after a range of draft laws is enacted. The President requires the Supreme Rada to approve them urgently. These drafts include:

- Draft Civil Code. It contains a separate chapter entitled "Intellectual Property Rights";
- Draft Customs Code. It implements border measures, as required by TRIPS, part III, section 4;
- Draft Criminal Code. It establishes criminal remedies required by TRIPS;
- Draft Law "On Amendment of Some Legislative Acts for the Purpose of Increasing Penalties for Infringements in the Field of Intellectual Property". It brings the

- Criminal Code, the Criminal Procedural Code, the Code on Administrative Violations, and the Customs Code into compliance with TRIPS, part III, section 5;
- Draft Law "On Peculiarities of Entrepreneurial Activity in the Output, Export and Import of Laser Discs". It is a regulatory act and is not directly relevant for intellectual property protection, but establishes conditions that improve the enforcement of copyright and related rights; and
- Draft Law "On the Amendment of Law On Copyright and Related Rights" is a new version of the current Law "On Copyright and Related Rights" No. 3792 dated 23 December 1993. The draft *inter alia* implements TRIPS, part II, section 1 and TRIPS, part III, section 3.

For the expected date of approval by the Rada of the above draft laws see "Schedule of Enactment of Priority Draft Laws Relevant for the Accession of Ukraine to the WTO." (WT/ACC/UKR/93)

Also, the Supreme Rada is considering the following draft law:

- Draft Law "On the Amendment of the Law On the Protection of Rights to Plant Varieties" is a new version of the current Law "On the Protection of Rights to Plant Varieties". It meets the requirements of TRIPS, Article 27, and the International Conventions on the Protection of Plant Varieties of 2 December 1961, as revised in Geneva on 10 November 1972, 23 October 1978 and 19 March 1991. After the law is enacted Ukraine will be able to accede to this convention.

The harmonization of the Ukrainian legislation with TRIPS' requirements will be complete after the following draft laws are enacted:

- Draft Law "On the Amendment of the Law On the Protection of Rights to Marks for Goods and Services";
- Draft Law "On the Amendment of the Law On the Protection of Rights to Industrial Designs";
- Draft Law "On the Amendment of the Law On the Protection of Rights to Indications of Origin of Goods";
- Draft Law "On the Amendment of the Law On the Protection of Rights to Inventions and Utility Models";
- Draft Law "On the Amendment of the Law On the Protection of Rights to Layout Designs of Integrated Circuits";
- Draft Law "On the Amendment of the Civil Procedural Code and the Arbitration Procedural Code";
- Draft Law "On the Accession of Ukraine to the Rome Convention On the Protection of Performers, Phonogram Producers and Broadcasting Organizations";
- Draft Law "On the Accession of Ukraine to WIPO Copyright Treaty"; and
- Draft Law "On the Accession of Ukraine to WIPO Phonograms Treaty".

The amendments to the laws are aimed at final harmonization of those laws with TRIPS, part II, sections 2-6, and the amendments to the codes are aimed at final harmonization of such codes with TRIPS, part III, sections 2 and 3.

The draft laws are expected to be submitted to and considered by the Rada in the second half of 2001.

In addition to further development of the legislation Ukraine is making structural adjustments and taking organizational measures aimed at stable application of TRIPS requirements.

In February 2000, Resolution of the Cabinet of Ministers No. 316 established the Governmental Committee on the Protection of Intellectual Property Rights. The main objective of the Committee is to coordinate activities of executive authorities in order to make sure that IPR legislation in Ukraine is adhered to and intellectual property is not used illegally. The plan of activities of the Governmental Committee includes steps aimed at the detection and elimination of sources of illicit export, production, and distribution of counterfeit products in Ukraine.

In November last year the Special Commission on the Protection of Intellectual Property was established within the Governmental Committee on the Protection of Intellectual Property Rights. The Commission is authorized to inspect enterprises which produce optical carriers of information to ensure that national intellectual property legislation as well as tax, customs, and other legislation on entrepreneurial activities is adhered to. Among the Commission members are representatives of central government authorities, technical experts of the International Federation of Phonographic Industries (IFPI) and a representative of the United States Embassy to Ukraine.

A special department on the protection of intellectual property has been established in the State Customs Service of Ukraine. Such departments will also have to be established in other central government authorities concerned.

So, there is a good reason to believe that in the nearest future Ukraine's intellectual property regime will be in full compliance with the requirements of TRIPS Agreement.
