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ACCESSION OF THE KINGDOM OF SAUDI ARABIA

Additional Questions and Replies

Addendum

The Permanent Mission of the Kingdom of Saudi Arabia has submitted the following additional replies, reproduced hereunder, to the questions submitted by delegations following the meeting of the Working Party on 2-3 May 1996, previously circulated as document WT/ACC/SAU/6. This document compiles the replies to questions 132-133, 157-175 and 176-182 of document WT/ACC/SAU/6. All paragraph references are to document L/7489 and all reply references are to document L/7645/Add.1, unless otherwise indicated.

IV. POLICIES AFFECTING TRADE IN GOODS

4. Policies Affecting Foreign Trade in Agricultural Products

Question 1.

(Qu. 132, 188, 190, L/7489) "The Saudi Agricultural Bank does not approve agricultural exports".

What is the role/mandate of the Saudi Agricultural Bank? Please provide most current figures regarding the amount, the terms and value of loans, as well as the type of subsidies disbursed.

Answer

The Saudi Arabian Agriculture Bank (SAAB) was established 23 years ago to act as a governmental credit centre with the objective of promoting agricultural development and progress through concessional loans. The credit provided enables farmers to purchase all production needs.

SAAB accomplishments during the last 5 years 1411/1412 to 1415/1416 A.H. (1991/1992 - 1995/1996) are:

Agricultural Loans:

The loans are of two types, short and medium terms.

- (a) Short-term loans: the duration is 1 year or less. These loans cover seasonal agricultural expenses such as preparation of the land, procurement, compost, seeds, burnings, etc..
- (b) Medium-term loans: duration does not exceed 10 years. These cover the major agricultural items such as buildings, other constructions, wells, machinery, irrigation pumps, agriculture mechanisms, boats, and fishery equipment, and others. In addition, they finance the specialized agriculture projects.

During the last 5 years, SAAB disbursed a total of 19,000 short and medium term loans valued at SR 3,545.7 millions.

Agricultural Subsidies.

Over the last 5 years the total value of subsidies paid to the farmers through SAAB amounted to SR 1,282 millions, distributed as follows:

Irrigation equipment SR 744.5 millions
Farm machinery SR 524.4 millions
Poultry equipment SR 3.1 millions
Transportation of imported livestock SR 10 millions

Question 2.

"The Saudi Agricultural Bank does not charge interest on loans. Minimal fees are charged to ensure the seriousness of applicants. The loan programme is operated out of a revolving fund ..."

Please provide more information on that revolving fund: budget, loans, grants, etc. What were the capital and interest subscriptions from the Ministry of Finance in 1994 and 1995?

Answer

SAAB capital is designated for lending and it depends on its own resources to finance loans from the collected instalments on existing loans. Therefore, SAAB's capital is turned over by re-lending what has been collected to other farmers and investors.

Total approved loans for the years 1994 and 1995 were SR 670.5 millions and SR 412.6 millions, respectively. Only SR 549 millions in 1994 and SR 364 millions in 1995 were paid.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME**2(a) Copyright and Related Rights****Question 3.**

- (a) Could Saudi Arabia explain more in detail how copyrights and related rights are protected?
- (b) What are the "special circumstances" under which authors rights are not protected?
- (c) How does its Law on the Protection of Copyrights comply with Articles 9 to 14 of the TRIPS Agreement?

Answer.

- (a) Saudi Arabia's Copyrights Law conforms to the requirements of Universal Copyright Convention and the Arab Copyrights Convention. The Law is enforced on domestic and imported products. With respect to imports, the Ministry of Information monitors land, sea, and air ports acting on complaints and tips.
- (b) Unpublished works and protected works that are no longer protected due to expiration of protection period (prescription period) are not accorded protection.
- (c) Saudi Arabia's Copyrights Law already meets the standards of the UCC and conforms to most provisions of Article 9 to 14 of TRIPS. To the extent that the Law does not meet TRIPS requirements, Saudi Arabia will introduce necessary changes to its intellectual property laws to meet its TRIPS obligations in accordance with terms of accession to be negotiated.

Question 4.

Saudi Arabia states in reply 235 (L/7645/Add.1) that its law does not provide for the term of protection as stipulated in Article 14.5 of the TRIPS Agreement - Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations. Does it intend to change its law accordingly?

Answer.

Please see reply (3c) above.

Question 5.

Does Saudi law provide copyright holders with the right to authorize or prohibit the commercial rental of their computer programs and cinematographic works? If not, will such a right be provided on implementation of the TRIPS Agreement?

Answer.

Yes, one of the main tenets of the Copyrights Law is the protection of the copyright holders rights by preventing others from renting their works, unless authorized by the copyright holder or his agent.

Question 6.

Article 18 of the Bern Convention requires that protection be provided for existing copyright works still protected in countries of origin. Will Saudi Arabia provide such retroactive protection upon implementation of the TRIPS Agreement, which also extends the provisions of Article 18, mutatis mutandis, to sound recordings?

Answer.

Please see reply (3c) above.

2(b) Trademarks

Question 7.

Could Saudi Arabia explain in what respect its "Trademarks Law" complies with the obligations under Articles 15 to 21 of the TRIPS Agreement?

Answer.

"Trademarks Law" complies with Article (15) of the TRIPS Agreement in distinguishing the essential element of the trademark which could be capable of protection. Also, actual use of trademark is not a precondition for registration and the nature of goods or services does not constitute in any case an obstacle for registration, except those not in conformity with Islamic rules. If registration of a trademark is accepted, the competent department then publishes this registration according to the procedures provided any interested party may object to the acceptance of a mark registration within ninety days from the date of publication (See Article 15 and 16 of the Code).

The owner of a registered trademark is considered as the only right holder of all rights conferred under Article (16) of the Agreement (See Article 25 of the Code).

Use of trademark with descriptive terms for a long period of time may constitute an exception to the right conferred by a trademark, which comply with Article (17) of the TRIPS Agreement.

Protection of the initial registration, and each renewal of registration, of a trademark is granted for ten years (A.H.), which is more than nine years (Gregorian). This period should not be less than seven years under Article (18) of the TRIPS Agreement (See Article 26 of the Code).

Article (19) of the TRIPS Agreement states that registration may be cancelled only after an uninterrupted period of at least three years of non-use, if use is required to maintain a registration, while this period reaches five of non-use under “Trademarks Law” (See Article 29-1 of the Code).

The use of trademark in the course of trade does not have any restrictions encumbered by special requirement, which comply with Article (20) of the TRIPS Agreement.

Finally, compulsory licensing of trademarks is not required in Saudi Arabia (See Article 38 of the Code). Also, ownership of a trademark may be assigned with or without the transfer of the business to which the trademark belongs. Thus, Saudi Trademarks Law complies with Article (21) of the TRIPS Agreement (See Article 34 of the Code).

Question 8.

Could Saudi Arabia elaborate more on its protection of well-known marks?

Answer.

Saudi “Trademarks Law” provide protection to internationally well-known marks even if they are not registered in Saudi Arabia. International marks as well as domestic marks are protected by the Law as an applicant for registration of a trademark must submit a statement wherein he recognizes that the mark does not contain an imitation or forged statements from other marks (see Article 2-9 of the Code).

Article (2-10) of the Trademark Law states that it is not considered a trademark when “...marks (are) identical to or similar to internationally known marks even if they are not registered in the kingdom.”

Internationally as well as nationally well-known marks are also protected by a statement which an applicant for registration should submit, wherein he recognizes that the mark does not contain an imitation or forged statements from other marks (Article 2-9 of the Code). Use of such a mark is considered as a Crime which leads to a sentence in Jail and/or a fine (Article 49-1).

In addition, protection of internationally well-known marks is extended to all categories of products and services as long as an applicant intends to register an internationally well-known trademark, used by a specific category, with the intention to use the well-known of this trademark in another category without justification.

Thus, Trademarks Law confers a full and perfect protection to well-known trademarks.

Question 9.

Could Saudi Arabia explain how geographical indications are protected under its Trademarks Law? Does the granted protection comply with the obligations under Articles 22 to 24 of the TRIPS Agreement?

Answer.

In respect of geographical indications, “Trademarks Law” prevents under Article (2-6) the registration, as a trademark, of geographical names if their use causes a misunderstanding as to the source of the products or services or origin’s name without any justification.

In addition, Article (29) allows the competent authority or any interested party to request the cancellation of a mark's registration if it was registered fraudulently or upon wrong information, such as false origin or source of the product or services, which comply with Article (22) of the TRIPS Agreement. Also Article (1) of the Law to Combat Commercial Fraud punishes any body who counterfeits or undertakes to do so in the origin of the good, which is additional protection in respect of geographical indications.

Finally, the additional protection for geographical indications for wines and spirits provided under Article (23) of the TRIPS Agreement is not covered because wines and spirits (and all alcoholic beverages) are prohibited by Islam.

Question 10.

In document L/7645/Add.1, reply 231(d) Saudi Arabia says that Article 2 of its Trademark Law lists the reasons why an application for a trademark would be rejected. In addition, trademark protection can also be refused "for failing to meet any of the terms and conditions provided for in the Trademarks Law and its implementing regulations". Could Saudi Arabia be more precise and explain what exactly this means?

Answer.

Article (2) of the "Trademarks Law" contains a list of "signs" that are deemed not to be trademarks. Applications containing, or based on, any of the signs listed will be rejected. Also, an application could be refused if the applicant fails to meet any of the formal procedures stipulated by the "Trademarks Law" or its Implementing Rules, such as payment of registration fees, renewal of registration, time deadlines, etc.

Question 11.

In reply 238 (L/7645/Add.1), Saudi Arabia states that foreigners are allowed to register trademarks if they normally reside in the Kingdom and are licensed to carry on a commercial act or trade activity. What are the conditions to obtain such a licence?

Answer.

Foreigners can obtain a licence to carry a commercial act or trading activity in accordance with the investment of Foreign Capital Regulation. Please see reply (26) for conditions for such licences.

Question 12.

In reply 238 (L/7489), Saudi Arabia states that for foreigners wishing to register trademarks there are restrictions which do not apply to Saudi nationals (residency requirements, requirement that they belong to a State dealing with Saudi Arabia on a reciprocal basis).

Does Saudi Arabia intend to remove these restrictions to comply with TRIPS national treatment requirements?

Answer.

Non-resident foreigners from States with which Saudi Arabia enjoys reciprocal agreements may apply to register trademarks. Once it becomes a WTO Member, Saudi Arabia would enjoy reciprocal arrangements with all States with which it has WTO relationship.

Eligible non-resident foreigners are required to file an application through an “official attorney.” In all other respects such foreigners enjoy national treatment.

Saudi Arabia will introduce necessary changes to its intellectual property laws to meet its TRIPS obligations in accordance with the terms of accession to be negotiated.

2(d) Industrial Designs

Question 13.

How does the current Saudi Arabian Copyright Law protect industrial designs? In reply 232 (L/7645/Add.1) Saudi Arabia states that it does not anticipate modifications of its law at the present time and that it will take whatever action is necessary to comply with its obligations when it accedes to WTO. Does this comment imply that Saudi Arabia considers its protection of industrial designs to be inconsistent with the relevant provisions of the TRIPS Agreement? If this is the case, what changes would be necessary?

Answer.

Protection for industrial designs will be covered by a Proposed Industrial Designs Law which will be implemented by The King Abdulaziz City for Science and Technology (KACST).

2(e) Patents

Question 14.

Could Saudi Arabia explain in more detail how patents are protected? Does its protection comply with Articles 27 to 34 of the TRIPS Agreement?

Answer.

With certain exceptions relating to coverage outlined in replies (16) and (18) of this document, Saudi Arabia's Patent Laws complies with the provisions of section 5 of TRIPS Agreement with respect to subject matter.

Under Saudi Article 22 of the Law, patent holders are accorded the rights mentioned in Article 28 of TRIPS.

Fines and compensation for damages are provided for under Article 47 of the Law.

Under Article 25 of the Law, a patent holder is required to make full industrial use of the patent in the Kingdom within 2 years.

For period of protection (TRIPS Article 33), please see reply (17) of this document.

Question 15.

In reply 234(a) (L/7489), Saudi Arabia has indicated that process patents are not protected from infringing use, and in reply 235(f), it is stated that Saudi law does not currently provide for the term of protection for performers and producers of phonograms stipulated in TRIPS Article 14(5). Elsewhere in document L/7645/Add.1, it is stated that Saudi Arabia does not anticipate making any changes to its laws regarding intellectual property at the present time.

Please describe how Saudi Arabia intends to implement these TRIPS provisions?

Answer.

According to Article (4) of the Patent Law, processes (methods of manufacturing) are considered one of the patentable subject matters, also Article 22 of the Patent Law stated that process patents are protected from infringing use.

As regards the non-coverage of performers and producers of phonograms, Saudi Arabia will introduce necessary changes to its Copyright Law to meet its TRIPS obligations in accordance with the terms of accession to be negotiated.

Question 16.

Does Saudi law currently provide for patent protection for new varieties of plants? If such protection is not offered at present, does Saudi Arabia intend to implement a patent or sui generis system for new plant varieties as required by TRIPS Article 27(3)?

Answer.

Plant varieties protection is not currently covered by the Patent Law. As mentioned above, Saudi Arabia will introduce necessary changes to its intellectual property laws to meet its TRIPS obligations in accordance with terms of accession to be negotiated.

Question 17.

The Patents of Inventions Law confers a patent term of 15 years from the date of granting, with the possibility of a 5-year extension. With the implementation of TRIPS, will this patent term be changed to the TRIPS norm of 20 years from filing date?

Answer.

It would be relatively simple to provide under the Patents of Inventions Law, with respect to nationals of WTO members, for an automatic 5 year extension of the current minimum 15 year protection period.

In any event, Saudi Arabia will introduce necessary changes to its intellectual property laws to meet its TRIPS obligations in accordance with terms of accession to be negotiated.

2(g) Layout Designs of Integrated Circuits

Question 18.

How do the current Patents of Inventions Law, Law to Combat Commercial Fraud and the Customs Law protect layout-designs?

Answer.

Rights relating to design (topographies) of integrated circuits are not covered by current laws. This issue is under review and our commitments will be consistent with our WTO commitments.