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

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REVIEW OF LEGISLATION

TAJIKISTAN¹

The present document reproduces the introductory statement made by the delegation of Tajikistan, the questions put to it and the responses given in connection with the review of legislation initiated at the Council's meeting of 28-29 October 2014.² The review was concluded in February 2016.³

1 INTRODUCTORY STATEMENT⁴

1. On behalf of Tajikistan, as one of the most recent members of the WTO, it is my pleasure to present today our national legislation in the field of intellectual property; we really appreciate WTO members' questions. In accordance with the obligations arising from the TRIPS Agreement, Tajikistan has submitted the necessary notification, which represents the basis for the review of the national intellectual property legislation.

2. By the Resolution of the Government of the Republic of Tajikistan № 242 from 28 May 1993, the National Center for Patents and Information under the Ministry of Economic Development and Trade was established, in order to deal with one of the priority activities - protection of the state's interests in the field of industrial property and the coordination of inventive activity in the country.

3. In January 1994 the Republic of Tajikistan became a member of the World Intellectual Property Organization. According to the Declaration of the Republic of Tajikistan concerning the most important international agreements in the field of industrial property Tajikistan recognizes their effect in its entire territory.

4. The specialists of the National Center for Patents and Information took part in drafting of the Eurasian Patent Convention, to which the country accessed according to the Act of Accession signed by the President of the Republic of Tajikistan on April 1995.

5. Currently, six laws regulating the protection of intellectual property are in force in the Republic of Tajikistan, notably the following:

1. The Law on Inventions;
2. The Law on Industrial Designs;
3. The Law on Legal protection of Integrated Circuits;
4. The Law on Trademarks and Service Marks;
5. The on Geographical Indications;

¹ As regards laws and regulations notified by Tajikistan under Article 63.2 of the Agreement, reference is made to documents IP/N/1/TJK/C/1, IP/N/1/TJK/U/1, IP/N/1/TJK/O/1, IP/N/1/TJK/O/2, IP/N/1/TJK/D/1, IP/N/1/TJK/G/1, IP/N/1/TJK/L/1, IP/N/1/TJK/P/1 IP/N/1/TJK/T/1 and IP/N/6/TJK/1.

² The minutes of this meeting have been circulated as document IP/C/M/77.

³ The minutes of this meeting have been circulated as document IP/C/M/81.

⁴ As reflected in paragraphs 39 to 54 of IP/C/M/77/Add.1.

6. The Law on Copyright and Related Rights.

6. Considering the importance that WTO membership has for its Members, in the process of amending the existing intellectual property related legislation, special emphasis was placed on harmonization with the TRIPS Agreement. In addition, questions, remarks and suggestions given to Tajikistan by Members during the accession process of Tajikistan to the WTO have been taken into account. Tajikistan has also focused its activities on harmonization with provisions of other relevant international treaties and agreements in the field of intellectual property.

7. Desiring to quickly integrate into the international community and to pave the way for foreign investments, the Ministry of Economic Development and Trade had developed an action plan of activities aimed at full compliance with the TRIPS Agreement.

8. Tajikistan is a member of the following conventions and treaties:

1. Paris Convention for the Protection of Industrial Property
2. Convention Establishing the World Intellectual Property Organization
3. Agreement on Trade-Related Aspects of Intellectual Property Rights
4. Madrid Agreement Concerning the International Registration of Marks
5. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks
6. Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks
7. Locarno Agreement Establishing an International Classification for Industrial Designs
8. Patent Cooperation Treaty (PCT),
9. Strasbourg Agreement Concerning the International Patent Classification
10. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
11. Nairobi Treaty on the Protection of the Olympic Symbol
12. Geneva Act of the Hague Agreement on the International Registration of Industrial Designs
13. Eurasian Patent Convention
14. Berne Convention for the Protection of Literary and Artistic Works
15. Universal Copyright Convention
16. Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms
17. International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organization (the Rome Convention)
18. WIPO Copyright Treaty
19. WIPO Performances and Phonograms Treaty
20. International Convention for the Protection of New Varieties of Plants (UPOV)

9. Tajikistan has established an institutional framework for the effective enforcement of IPRs. Authorities responsible for the enforcement of IPRs are primarily: Customs Administration, Police Administration, Administration for Inspection Affairs, the Commercial Court, Courts of General Jurisdiction and the Prosecutor's Office. Tajikistan is committed to further strengthening institutional and administrative capacities in order to ensure effective protection of IPRs.

10. We believe that Tajikistan has created an intellectual property system that gives everyone a chance to take advantage of its provisions and to use opportunities in business and trade. The use of IPRs based on law will help in the creation of new jobs, affect the well-being of society, encourage development of the skills of the population and protect those who put new products and

services in the market. All these factors should make Tajikistan attractive to foreign and domestic investors.

11. However, Tajikistan is aware of the need for additional work and further reforms in order to valorize the benefits that intellectual property provides.

12. Tajikistan recognizes the following as strategic goals that would contribute to the further development of intellectual property:

- Improved enforcement of intellectual property rights;
- Increasing economic growth through effective use of intellectual property;
- Improvement of methods of acquiring and managing intellectual property;
- Better business and public understanding of the use and the value of intellectual property, as well as the importance of the enforcement of IP rights;
- Improvement and modernization of information systems in terms of intellectual property issues.

13. Having said all of the above, our opinion is that Tajikistan has met the standards set by the TRIPS Agreement, and that Tajikistan's legislation on protection of IPRs is in compliance with the provisions of this Agreement.

14. In conclusion, we believe that Tajikistan has significantly amended and improved the legislation on protection of IPRs, and that the development of the IP system was not limited to the requirement of the binding international agreements. These efforts prove Tajikistan's will and determination to build and operate an effective system for the protection of intellectual property in order to facilitate the development of its economy.

15. I want to reiterate Tajikistan's intention to cooperate with all WTO Members, especially with those who have interests in Tajikistan's IP market, and those who desire to share their experiences in implementing the commitments and obligations under the TRIPS/WTO framework.

16. As mentioned by the Chair, we recently received the questions posed by the delegation of the US regarding the review of the implementation of the TRIPS obligations. We appreciate these questions. Since we just received these questions a few days ago, we have not had the opportunity to study them carefully. Therefore, I would like to ask the Council to allow us to send these questions to our IP experts in capital and prepare our responses before the next TRIPS Council meeting in February 2014.

2 RESPONSES TO THE QUESTIONS AND FOLLOW-UP QUESTIONS POSED BY THE UNITED STATES⁵

2.1 COPYRIGHT

Question 1: We note that during the accession process, we had an opportunity to review Tajikistan's Copyright law, but that the Copyright law has not been notified to the WTO pursuant to TRIPS Article 63, or at least such a law is not reflected in the WTO database of such laws. Has the Copyright law been notified?

Tajikistan's reply:

The Copyright Law has been notified in the meantime.

⁵ The questions posed by the United States are contained in documents IP/C/W/604 and IP/C/W/604/Add.1. The responses made by Tajikistan are contained in document IP/C/W/606/Rev.1.

WT/ACC/SPEC/TJK/5/Rev.2:

Question 2: Page 82, paragraph 261: There is a wording/translation problem in Articles 4 and 30, that the government of Tajikistan noted would be clarified in document WT/ACC/TJK/23, questions 77, 87 and 95.

Tajikistan's reply:

Paragraph 261 of WT/ACC/SPEC/TJK/5/Rev.2 does not appear to refer to "a wording/translation problem in Articles 4 and 30". However, any wording / translation issues that may have existed at time document WT/ACC/TJK/ 23 was compiled, have been corrected.

Follow-up question: This issue has still not been addressed as the final boldface paragraph in Articles 4 and 30 still says "and" instead of "or".

Tajikistan's reply to follow-up question:

The answer requires further investigation and will be provided at a later stage.

Question 3: Page 83, paragraph 262: In earlier documents, the GOT had clarified that works whose term had expired and had fallen into the public domain in Tajikistan would still be protected in Tajikistan if they had not fallen into the public domain in their country of origin. WT/ACC/TJK/23, Questions 77, 87 and 95.

Tajikistan's reply:

Tajikistan reconfirms that this is still the case - works whose term had expired and had fallen into the public domain in Tajikistan would still be protected in Tajikistan if they had not fallen into the public domain in their country of origin .

Question 4: Page 83, paragraph 263: As noted In WT/ACC/TJK/24, question 94, this exception would not apply to books that the publisher makes available in Braille, regardless of whether the work was "originally" created in Braille or not.

Tajikistan's Reply:

The exception in Article 20 (6) of the Law on Copyright and Neighboring Rights refers to reproduction of copyrighted works initially made available in a 'conventional ' manner. Such works can be reproduced using Braille, thus making them available to the blind. However, this exception does not cover the works that have been created to be published in Braille, which are protected by copyright as any other work.

Follow-up question: If a book was originally made in a "conventional manner," such as a print book, and the publisher is now also making copies of the book available in Braille, would the Article 20(6) exception apply?

Tajikistan's reply to follow-up question:

Yes, it would, provided that the copies are made not for profit.

Question 5: Page 83, paragraph 264: We would like to understand this better. What right holders are subject to these government regulations? Can an exclusive right holder deny use or demand whatever payment or concessions it wants to license use of its works?

Tajikistan's reply:

These government regulations set the minimum remuneration only. The purpose is to protect the right holders (authors), who are usually a weaker contracting party and ensure that they will receive the minimum, justified remuneration for transferring of their rights. These regulations cover all authors/ right holders, referred to in the Law on Copyright and Neighboring Rights. However, these regulations do not in any way regulate or limit the right of the exclusive right

holders to freely dispose of their rights. Consequently, exclusive right holder is entitled to deny use or to demand whatever payment or concessions it wants to license use of its works.

WT/ACC/TJK/24:

Question 6: Page 27, Question 65/ 84: Please confirm that the owners of audiovisual works have the exclusive right of "in sequence" demonstrations. Does Article 16(5) include both in and out of sequence demonstrations? Please explain the difference between 16(4), presentation of works in public, and 16(5), performance of works in public.

Tajikistan's reply:

Tajikistan confirms that the owners of audiovisual works have the exclusive right of "in sequence" demonstrations. The difference between 16(4) presentation of works in public, and 16(5) performance of works in public, is based on a difference among different art forms. For example, a movie director would present his work (a movie) in public, whereas a singer or musician would perform - sing or play, live in public.

Question 7: Page 28, Question 68/ 97: Please clarify where broadcasting organizations have the right to prohibit non-simultaneous broadcasting/communication to the public via wireless broadcasting.

Tajikistan's reply:

Broadcasting organizations have the right to prohibit any simultaneous or non-simultaneous broadcasting/ communication to the public via wireless broadcasting in accordance with Berne Convention Article 11 and TRIPS. Please note that by the ratification of the Berne Convention and TRIPS, both became integral part of Tajikistan's internal legal system, which enabled their direct implementation. Furthermore, in case of any conflict between the ratified international agreement/ convention and the domestic legislation, ratified International agreement/ convention prevails.

Follow-up question: Is there a section in your copyright or communications law that provides this, or is it only by virtue of Tajikistan's adherence to international agreements?

Tajikistan's reply to follow up-question:

Provision of Article 36 of the Copyright law covers this matter.

WT/ACC/TJK/30:

Question 8: Paragraph 264, pp. 58-59: When does Tajikistan intend to file its documents and accede to the Convention for the Protection of the Interests of Producers of Phonograms from Illegal Broadcasting of their Phonograms (the Geneva Convention)?

Tajikistan's reply:

Tajikistan acceded to the Convention for the Protection of the Interests of Producers of Phonograms from Illegal Broadcasting of their Phonograms (the Geneva Convention) on 26 February 2013.

Question 9: Paragraph 273, pp. 60-61: Are foreign works that were still protected in their country of origin, but were in the public domain in Tajikistan in 1998 because the 25 year term had expired, protected in Tajikistan? For example, how long would a US work created In 1965 by an author who died in 2000 be protected in Tajikistan?

Tajikistan's reply:

Amendments to the Law on Copyright and Neighboring Rights that were adopted in 2009 included provisions on retroactive effect, thus enabling the protection in Tajikistan of foreign works that were still protected in their country of origin, but were in the public domain in Tajikistan in 1998

because the 2S year term had expired. In the example above the work will be protected in Tajikistan 50 years after the death of its U.S. author, i.e. until 2050.

Follow-up question: I refer to question 2, above, which notes that Articles 4 and 30 still say "and" instead of "or"

Tajikistan's reply to follow-up question:

The answer requires further investigation and will be provided a later stage.

Question 10: Paragraph 276, p. 61: Paragraph 276 explains the rights of producers of phonograms, including the right to remuneration. Do performers on phonograms have similar rights?

Tajikistan's reply:

Yes, they do.

Follow-up question: Where does the law provide for this?

Tajikistan's reply to follow-up question:

Provision of Article 34 of the Copyright law covers this matter.

2.2 PATENTS

Question 11: We look forward to reviewing amendments to the law "On Inventions" and other relevant legislation that further implement the requirements of the TRIPS Agreement, particularly with Articles 30 and 31.

Tajikistan's reply:

The amended Law on Inventions and other legislation that implements TRIPS requirements have been duly notified and are available for review.

2.3 PROTECTION OF UNDISCLOSED INFORMATION

Question 12: We look forward to reviewing the relevant legislation that further implements the requirements of the TRIPS Agreement, particularly with regard to Article 39. The laws currently notified to the WTO do not appear to provide such protections.

Tajikistan's reply:

Tajikistan will look into the matter and notify the missing legislation, if any.

2.4 ENFORCEMENT

Question 13: We note that during the accession process, we also had an opportunity to review Tajikistan's Enforcement laws, but that such laws have not been notified to the WTO pursuant to TRIPS Article 63, or at least are not reflected in the WTO database. Has the Enforcement law been notified?

Tajikistan's reply:

In the legal system of the Republic of Tajikistan there is no such thing as the " Enforcement law" . Each substantive IP law contains also some provisions on their enforcement. In addition, there are procedural laws, which regulate civil, penal and administrative procedures; however these laws are general, they regulate procedures, regardless of the subject matter, which may, or may not be related to IP rights.

Question 14: How will the government deal with anti-competitive licensing and how is this reflected in the law?

Tajikistan's reply:

The government does not have any specific immediate plans for dealing with anticompetitive licensing.

Question 15: Are only Tajikistani citizens permitted to be patent attorneys in Tajikistan and if so, what's the rationale for the citizenship requirement?

Tajikistan's reply:

Yes, only Tajikistani citizens are permitted to be patent attorneys in Tajikistan. This is based on Tajikistan's legal traditions, where the assumption is that the essential requirement for a patent attorney is to speak the local language and to know the local law.

Question 16: Can you provide some examples of recent actions to enforce intellectual property rights? Do customs and criminal enforcement officials have ex officio authority to enforce intellectual property rights? What measures are Tajikistan taking to address copyright infringement and digital piracy?

Tajikistan's reply:

In accordance with the applicable laws the customs and criminal enforcement have an ex officio authority to enforce intellectual property rights. However, their enforcement activities are limited. Tajikistan plans to address the issue of JP enforcement in due course.

Question 17: Are penalties for counterfeiting and piracy a deterrent so that infringers do not view fines and penalties as merely the cost of doing business?

Tajikistan's reply:

Tajikistan is of the opinion that penalties for counterfeiting and piracy are a deterrent, and could not be seen as just the cost of doing business.

Question 18: We recognize that Tajikistan is committed to intellectual property rights. In this respect, does the Government of Tajikistan take the necessary steps to eliminate unlicensed software use by all Government Ministries, including the allocation of appropriate funding for the purchase of legitimate software?

Tajikistan's reply:

The Government of Tajikistan takes this issue seriously and will take the necessary steps to eliminate unlicensed software use in accordance with the available resources. In this respect, the government provides funding for acquisition of the legitimate software by government entities. In addition, in November 2014, representatives of Microsoft met with several ministries to discuss the issue and possible solutions.

Question 19: We note that U.S. expert agencies stand ready to assist Tajikistan on implementing specific reforms and to engage in technical-level exchanges.

Tajikistan's reply:

Tajikistan appreciates the readiness of U.S. expert agencies to provide assistance in implementing specific reforms and is looking forward to such cooperation.

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WT/ACC/SPEC/TJK/5/Rev.2

Question 20: Page 83, Paragraph 263: Regarding Tajikistan's answer to question 93 regarding whether the phrase " ... exclusively for the purposes of personal use ... " allows persons to make unlimited copies - how will Tajikistan's assumption in the

original legislation that the number of copies is limited to one, have the force of law? Will the appropriate bodies enforce this assumption? Is Tajikistan prepared to clarify this assumption in the text of the laws or regulations?

Tajikistan's reply:

Assumption in the original legislation that the number of copies is limited to one does not have the force of law; however this provision is interpreted and enforced by appropriate bodies in such a way. Tajikistan is prepared to clarify this assumption in its legislation in due course.
