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1 ARTICLE 70

1.1 Text of Article 70

Article 70

Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.
2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.
3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.
4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.
5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.
6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.
7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.
8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

- (a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;
- (b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and
- (c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

1.2 Article 70.8 and Article 70.9

1. On 8 July 2002 the General Council adopted a waiver of the obligations of least developed country Members under paragraph 9 of Article 70 with respect to pharmaceutical products until 1 January 2016.¹

2. On 30 November 2015, the General Council decided to continue this waiver of obligations under paragraph 9 of Article 70 and to also include a waiver of least developed country Members' obligations under paragraph 8 of Article 70 with respect to pharmaceutical products until 1 January 2033, or until such date on which they cease to be a least developed country Member, whichever date is earlier.²

3. The waivers are subject to an annual review in accordance with the provisions of paragraph 4 of Article IX of the WTO Agreement.³

Current as of: February 2019

¹ [WT/L/478](#); [WT/GC/M/75](#). The Council for TRIPS approved the draft waiver (JOB(02)/57/Rev.1) at its meeting on 27 June 2002. (See [IP/C/M/36](#)). At the same meeting, the Council for TRIPS adopted a decision extending the transition period under Article 66.1 for least-developed country Members for certain obligations with respect to pharmaceutical products ([IP/C/25](#)).

² [WT/L/971](#); [WT/GC/M/160](#). This was based on a recommendation ([IP/C/74](#)) approved by the Council for TRIPS at its meeting on 23 November 2015. (See the minutes in [IP/C/M/80](#) and addendum). At the same meeting, the Council for TRIPS adopted a decision extending the transition period under Article 66.1 for least developed country Members for certain obligations with respect to pharmaceutical products ([IP/C/73](#)). For the initial request submitted by least developed country Members on 23 February 2015 see [IP/C/W/605](#).

³ For 2018, see the minutes in [WT/GC/M/173](#).