



EMBASSY OF BRAZIL

06 June 2011

No.

Ms Julie Dennett,
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

Dear Ms Dennett,

Brazil fully applies the TRIPS Agreement since 1996, the year of the approval of the Industrial Property Law (Federal Law n° 9.279/1996);

In spite of being a developing country, Brazil has not used the transition period available under article 65 of the TRIPS Agreement;

Brazilian Law includes TRIPS-Plus provisions under its Industrial Property Law, such as: a) a minimum term of protection of ten years from the grant date irrespective of the filing date, and b) the so-called “pipeline patents” for application in technological fields which were not patentable in Brazil before 1994.

Under the pipeline provision, an application for a patent, related to substances, materials or products obtained by chemical means or processes, and alimentary or chemical-pharmaceutical substances, materials, mixtures or products, and medications of any kind, as well as the respective processes for obtaining or modifying them, may be filed by a party who enjoys protection guaranteed by a treaty or convention in force in Brazil, in which case it is assured the date of the first patent application filed abroad, provided that its object has not been introduced on any market by direct initiative of the titleholder or by a third party with his consent, and that no serious and effective preparations to exploit the object of the application or of the patent have been made, in this country, by third

parties. Examples of patents granted under the pipeline mechanism are the ARV drugs efavirenz, abacavir and lopinavir.

Brazil's Industrial Property Law forbids as non-invention the patenting of the whole or part of any live natural being and biological material found in Nature, even isolated thereof, including the genom or germoplasm, and the natural biological processes.

However, Brazilian legislation grants patents to isolation and purification processes of parts of live beings and biological materials found in Nature, including the genom or germoplasm, provided they fulfill the requirements of novelty, innovative step and industrial application. In addition, the Brazilian law allows for the patenting of genetically-modified micro-organisms.

Furthermore, the development of biotechnology research and industry was selected by the Brazilian Government as one of the key priorities for public investment under the PDP (Productive Development Policy).

Lastly, Brazil is considering the accession to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, as an International Depositary Authority under the Treaty, as part of the country's effort to become a player in this field of technology.

Yours very sincerely,



Rubem Corrêa Barbosa
Ambassador of Brazil