

OXFORD COMMENTARIES ON
THE GATT/WTO AGREEMENTS

TRADE RELATED
ASPECTS OF
INTELLECTUAL
PROPERTY RIGHTS

A Commentary on the
TRIPS Agreement

CARLOS M. CORREA

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OXFORD COMMENTARIES ON
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Trade Related Aspects of Intellectual
Property Rights

To Liliana, for her permanent support and tolerance of my intense travel and
long working hours, and to my children Julia, Carlos, Laura, Juan,
Elisa and Carolina.

Preface

The Agreement on Trade Related Aspects of Intellectual Property Rights ('the TRIPS Agreement') sets out a number of obligations that the Members of the World Trade Organization (WTO) need to comply with when designing their intellectual property regimes. Unlike the other components of the system, the TRIPS Agreement does not aim at liberalizing trade, but at establishing rules for the appropriation of intellectual assets and the control over the production and trade of the products derived therefrom.

The TRIPS Agreement stipulates (except with regard to transitional periods and technical assistance) the same rules for developed and developing countries. Given the profound asymmetries existing amongst WTO members in their levels of development, particularly as regards their scientific and technological base, it is not surprising that this Agreement became one of the most controversial pieces of the multilateral trade system. An appropriate interpretation of its provisions is essential, therefore, to ensure a balance between the public interests and those of right holders.

This book provides elements for the interpretation and application of the TRIPS Agreement, having in view the implications of different provisions in various sectors of the economy. The analysis is based on the rules of interpretation codified in the Vienna Convention on the Law of the Treaties. It aims at clarifying the content and scope of the obligations created by the Agreement, as well as the room available to governments to adapt their legal regimes to different circumstances and policy objectives.

A basic notion underlying this book is that the TRIPS Agreement does not set forth a uniform law on intellectual property; rather it stipulates a set of minimum standards that may be differently implemented in Member countries, while it leaves many aspects to the discretion of national laws. As result, there are different legal options that may be chosen, within certain limits, in implementing the Agreement to develop national intellectual property systems that promote a competitive environment for innovation and the diffusion of new products and technologies.

The book provides commentaries on each of the provisions of the Agreement taking into account, where available, the rulings of WTO panels and the Appellate Body. Inevitably, the analysis builds on my previous work on the subject.¹ I am thankful to all who have contributed to the analysis of the Agreement from different

¹ See, eg 'Review of the TRIPS Agreement and transfer of technology to developing countries', in K Gallagher (editor), *Putting Development First. The Importance of Policy Space in the WTO and IFIs*, (2005: London and New York, ZED Books); 'The TRIPS Agreement from the perspective of developing countries', in P Macrory, A Appleton, and M Plummer (editors), *The World Trade Organization: Legal, Economic and Political Analysis*, (2005: New York, Springer); 'Managing the

positions and perspectives, and to the various organizations that have allowed me to be closely related to the inception and implementation of the TRIPS Agreement.

Carlos M. Correa
Buenos Aires
November, 2006

Provision of Knowledge: The Design of Intellectual Property Laws', in I Kaul, P Conceicao, K Le Goulven, and R Mendoza (editors), *Providing Global Public Goods—Managing Globalization*, (2003: New York, Oxford University Press); 'Pro-competitive measures under the TRIPS Agreement to promote technology diffusion in developing countries', in P Drahos and R Mayne (editors), *Global Intellectual Property Rights: Knowledge Access and Development*, (2002: New York, Palgrave and Oxfam GB); 'TRIPS and access to drugs: toward a solution for developing countries without manufacturing capacity?', *Emory International Review*, vol 17, No. 2, Summer, 2003; *Protection of data submitted for the registration of pharmaceuticals. Implementing the standards of the TRIPS Agreement*, (2002: Geneva, South Centre/WHO); 'Internationalization of the patent system and new technologies', *Wisconsin International Law Journal*, vol. 20. No. 3, 2002; 'Fair use in the digital era', *International Review of Industrial Property and Copyright Law*, vol. 33, No. 5/2002; Implementation of the WHO General Council Decision on paragraph 6 of the Doha declaration on the TRIPS Agreement and Public Health, (2004: Geneva, WHO); 'Protection of geographical indications in the CARICOM countries' Caribbean Regional Negotiating Machinery, 2002, available at <www.crnw.org/documents/studies/Geographical%20Indications%20-%20Correa.pdf>; Implications of the Doha Declaration on the TRIPS Agreement and public health, (2002: Geneva, WHO); Implementation of the WHO General Council Decision on paragraph 6 of the Doha declaration on the TRIPS Agreement and Public Health, (2004: Geneva, WHO); author's contributions to UNCTAD–ICTSD, *Resource Book on TRIPS and Development* (2005: New York, Cambridge University Press); *Integrating public health concerns into patent legislation in developing countries*, (2000: south centre, Geneva); 'Intellectual property in the field of integrated circuits: implications for developing countries', *World Competition*, Vol.14, N1 2, December 1990.

List of Abbreviations

AB	Appellate Body
BIT	Bilateral Investment Treaty
CAFTA-DR	Dominican Republic–Central America Free Trade Agreement
DSU	Dispute Settlement Understanding
ECJ	European Court of Justice
EMRs	Exclusive marketing rights
FDI	foreign direct investment
FTAA	Free Trade Area of the Americas
FTAs	free trade agreements
GATT	General Agreement on Tariffs and Trade
IP	intellectual property
IPR/IPRs	intellectual property rights
ITC	International Trade Commission
LDCs	least-developed countries
MAI	Multilateral Agreement on Investment
MFN	most-favoured nation
NAFTA	North American Free Trade Agreement
OEM	original equipment manufacturer
R&D	research and development
TK	traditional knowledge
TOT	transfer of technology
TRIPS	Trade-related Aspects of Intellectual Property Rights
UPOV	International Union for the Protection of New Varieties of Plants
VCLT	Vienna Convention on the Law of Treaties
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization

Table of Cases

Adams v Burke, 84 US 453 (17 Wall) (1873)	85
Alappat, <i>In re</i> , 33 F 3d 1526, Fed Cir 1994	279
Alkylendiamine II, German Federal Court, 25 June 1976	345
Aluminum Wheels: Jap-Auto Products v BBS Kraftfahrzeug Technik AG, Hanrei Jiho (Supreme Court, 1 July 1997)	82
Amgen v Chugai Pharmaceutical Co., 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir.), cert. denied, 502 U.S. 856 (1991)	295
AT&T Corp v Excel Communications, Inc, 172 F3d 1352, Fed Cir 1999	279
Atlantic Works v Brady, 107 US (Otto) 192, 1883	276
Bayer Inc v The General Attorney of Canada, the Minister of Health, Apotex Inc and Novopharm Ltd, 19 May 1999	385
British Horseracing Board Ltd v William Hill Organisation Ltd, Case C 203/02 [2004] ECR I-10415	126
Campbell v Acuff-Rose (92ñ1292), 510 US 569 (1994)	141
Cuno Engineering Corp, 314 US 84, 51 USPQ 1, 1941	276
Diamond v Bradley, U.S. Supreme Court, 450 U.S. 381, 1981	278
Diamond v Diehr, U.S. Supreme Court, 450 U.S. 175 1981	278
Dr. Karl Thomae Gesellschaft mit Beschränkter Haftung c/ Instituto Nacional de la propiedad Industrial s/ denegatoria de patente of 13 February 2001, Argentine Supreme Court of Justice	22
Du Pont Powder Company v Masland, 244 US 100, 61 L Ed 1016, 37 S Ct 575 (1917)	367
Ebay Inc. et al v Mercexchange, LLC of 15 May 2006; 401 F 3d 1323	417, 423, 424
EI du Pont de Nemours and Co v INPI, Third Jurisdiction No 2004/0053855-05 (Brazilian Court)	492
Eldred v Ashcroft, 537 US 186	134
EMI Records v CBS Schallplatten GmbH, 1976 ECR, reproduced in (1976) 7 IIC 275	89
Ets-Hokin v Skyy Spirits Inc, 225 F 3d 1068 (9th Cir 2000)	121
Feist Publication Inc v Rural Telephone Services, III S Ct 1282, 1991; 499 US 340, 1991	38, 122, 127
Fixtures Marketing Ltd v Organismos Prognostikon Agnon Podosfairou AE (OPAP), Case C 444/02 [2004] ECR I-10549	126
Fixtures Marketing Ltd v Oy Veikkaus Ab, Case C 46/02 [2004] ECR I-10365	126
Fixtures Marketing Ltd v Svenska Spel Ab, Case C 338/02 [2004] ECR I-10497	126
FTC v Borden Company, U.S. Supreme Court, 383 U.S. 637 (1966)	202
Golan v Ashcroft, No. CIVA.01-B-1854, 2004 WL 615569 (D Colo 15 Mar 2004)	510
Great Atlantic & Pacific Tea Co v Supermarket Equipment Co, 340 US 147, 87 USPQ 303, 950	276
HARVARD/Onco-mouse, T19/90 [1990] E.P.O.R. 501	289, 290
IR v IXYS, Fed. Cir. 2004 (04-1014)	424
Junguersen v Ostby & Barton Co, 335 US 560, 80 USPQ 32 (1949)	276
Kodak SA v Jumbo-Markt AG, 4C.24/1999/rnd, 7 December 1999	79
Lubrizol/Hybrid Plants, Case T320/87 [1990] EPOR 173	293
Madey v Duke, 64 USPQ 2d 1737 (Fed Cir 2002)	304
Merck & Co v Primecrown Ltd, Joined Cases C-267/95 and C-268/95 [1996] ECR I-6285	82, 86

Merck KGaA v Integra Lifesciences Ltd, et al Supreme Court (03-1237) 331 F.3d 860 of 13 June 2005	417
Parfums Christian Dior SA and Tuk Consultancy BV, Joined Cases C-300/98 and C-392/98 [2000] ECR I-11307	23, 38
Parfums Givency, Inc v Drug Emporium, Inc, 38 F.3d 477	440
Pharmon v Hoechst, Case 19/84 [1985] ECR 2281	82
Phil Collins, OJ EC N C312/3, 18 November 1993	259
PLANT GENETIC SYSTEMS/Glutamine synthetase inhibitors, T356/93 [1995] EPOR 357	288
Portugal v Council, Case C-149/96 [1999] ECR I-8395	23
Roche Products Inc v Bolar Pharmaceutical Co, 733 F.2d 858, Fed Cir, cert denied 469 US 856, 1984	305
Ruckelshaus v Monsanto Co, 467 US 986, 104 S.Ct. 2862, 26 June 1984	385
Sega v Accolade, CA 9, No 92-15655, 20.10.92	125
State Street Bank v Signature Financial Group, 149 F.3d 1368, Fed Cir 1998	279
Tele-Direct (Publ'ns) Inc v American Bus Infor Inc (1997) [1998] 2 F.C. 22 (Fed. Ct. App.)	122
Thai Cigarette Case, BISD 37th Supp 200	106
Theberge v Galeries d'Art du Petit Champlain Inc [2002] 2 SCR 336	135
Unilever NV c/Instituto Nacional de la propiedad Industrial s/denegatoria de patente of 24 October 2000, Argentine Supreme Court of Justice	22
Unilever NV v Instituto Nacional de Propiedad Industrial s/denegatoria de patente, reproduced in El Derecho, 2 August 2001	27
University of London Press v University Tutorial Press Ltd, 1916, 2 Ch 601, 86 LJCh 107, 115 LT 301, 13 Digest (Repl) 55, 53	122

TABLE OF PANEL AND APPELLATE BODY REPORTS

Argentina—Certain Measures on the Protection of Patents and Test Data, WT/DS196, 30 May 2000	86
Argentina—Certain measures on the protection of patents and test data: Request for Consultations by the United States WT/DS196/1 IP/D/22, 6 June 2000	514
Argentina—Patent Protection for Pharmaceuticals and Test Data Protection for Agricultural Chemicals, WT/DS171, 6 May 1999	86
Argentina—Safeguard Measures on Imports of Footwear, WT/DS121/AB/R (2000)	18, 93
Brazil—Measures Affecting Patent Protection, Request for the Establishment of a Panel by the United States, WT/DS199/3, 9 January 2001	286
Brazil—Measures Affecting Patent Protection, Notification of Mutually Agreed Solution, WT/DS199/4, G/L/454, IP/D/23/Add.1, 19 July 2001	286
European Communities—Patent Protection for Pharmaceutical and Agricultural Products, WT/DS153/1, 2 December 1998	26
Canada—Certain Measures Concerning Periodicals, AB-1997-2, WT/DS31/AB/R,	57, 110
Canada—Patent Protection of Pharmaceutical Products WT/DS114/R, 17 March 2000	4, 6, 18, 26, 29, 30, 48, 50, 51, 55, 61, 71, 93, 101, 102, 194, 263, 273, 282, 283, 309, 310, 311, 412, 483, 485, 486
Canada—Term of patent protection WTO/DS170/AB/R, 5 May 2000	61, 344, 483, 507
EC—Measures affecting the approval and marketing of biotech products WT/DS291/R, WT/DS292/R, WT/DS293/R	414
EC—Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, 12 March 2001	107, 327

EC—Protection of trademarks and geographical indications for agricultural products and foodstuffs, WT/DS174/R, 15 March 2005	42, 43, 53, 55, 57, 186, 227
EC—Regime for the Importation, Sale and Distribution of Bananas, WT/DS27/AB/R (1997)	480
EC—Regime for the Importation, Sale and Distribution of Bananas—Recourse to Arbitration by the European Communities under Article 22.6 of the DSU, WT/DS27/ARB/ECU, 24 March 2000	47, 480
India—Patent Protection for Pharmaceutical and Agricultural Chemical Products, WT/DS50/R	5, 109, 474, 475, 477, 484, 485, 487, 492
India—Patent Protection for Pharmaceutical and Agricultural Chemical Products, WT/DS50/AB/R, 19 December 1997	28, 474, 483, 485, 489
India—Patent Protection for Pharmaceutical and Agricultural Chemical Products, WT/DS79/R, 1998	483
Indonesia—Cars WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, 2 July 1998	57, 62, 201
Korea—Dairy Safeguard, WT/DS98/AB/R, 14 December 1999	17, 18
United States—Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (1998)	18, 50
United States—Imports of Certain Automotive Spring Assemblies, L/5333, BISD 308/107, 26 May 1983	64
United States—Standards for Reformulated and Conventional Gasoline, WT/DS 52 and WT/DS4	64
United States—Restrictions on Imports of Cotton and Man-made Fibre Underwear, WT/DS24/R, 8 November 1996	474
United States—Section 110(5) of the US Copyright Act, WT/DS160/R, 15 June 2000	5, 6, 27, 30, 49, 51, 54, 137, 139, 144, 145, 146, 148, 149, 150, 154, 157, 159, 194, 195, 308, 310, 484, 487
United States—Section 211 Omnibus Appropriations Act of 1998, WT/DS176/AB/R (Havana Club Case)	33, 35, 37, 45, 49, 52, 53, 54, 56, 65, 66, 176, 178, 179, 184, 185, 188, 201, 419, 484, 487
United States—Section 301 and 310 of the Trade Act of 1974, WT/DS152/R (2000)	480
United States—Section 337 of the Tariff Act of 1930, Panel Report adopted 7 November 1989, BISD 36S/345	54, 285
United States—US Patents Code, WT/DS224/1, 7 February 2001	286

Table of International Instruments and National Laws

WTO AGREEMENTS

Agreement Between the World Intellectual Property Organization and the World Trade Organization	476
Agreement Establishing the WTO	1, 45, 68, 246, 247, 281
Preamble	89, 92
para 3	2
Art II:2	57, 110
Art IV:2	498
Art IX:1	498
para 3-4	498
Art X	325
Art X, para 6	519
Annex 1C	9
Agreement on Subsidies and Countervailing Measures	
Art 11.9	448
Antidumping Agreement	
Art 5.8	448
General Agreement on Trade in Services (GATS)	57, 78, 150
Art VIII	398
Art IX	398
General Agreement on Trade and Tariffs 1947	4, 5, 484, 485
Art IX.6	4,
Art XII.3	4
Art XVIII.10	4
Art X	472
Art XX(d)	2, 4
General Agreement on Trade and Tariffs Tokyo Round 1973-1979	9
General Agreement on Trade and Tariffs Uruguay Round 1986-1993	1, 14
General Agreement on Trade and Tariffs 1994	1, 4, 5, 10, 13, 15, 16, 57, 78, 150, 285, 353, 398, 480
Art I	65
Art III	6, 56
Art III.4	55, 57, 58
Art IX.6	5
Art X	4, 473, 479
Art X.1	474
Art X.2	474
Art XI	6, 89
Art XI:1	106
Art XIV	68
Art XIV <i>bis</i>	520
Art XIX	18

Art XX	64, 106, 107, 110
(b)	106, 107, 109, 316
(d)	7
(g)	50
Art XXI	520
Art XXII	4, 479
Art XXIII	4, 479
Art XXIII.1(b)	488, 490
(c)	488, 490
Art XXIII.3	488
Art XXIV	68
TRIPS Agreement	1, 5, 10, 12, 13, 15, 18, 23, 36
Pts I-IV	45
Pt I	31, 46, 93
ss 1-7	31, 33
ss 2-4	92
Pt II	45, 46, 56, 81
ss 1-7	35, 37, 68, 69
s 1	92, 115, 139, 259
ss 2-6	467
s 2	32, 174, 470
s 3	237, 246
s 4	264, 268
s 5	31, 33, 268, 499
s 6	352, 353
s 7	32, 366, 377, 496, 499
Pt III	24, 31, 45, 46, 56, 81, 174, 175, 186, 197, 409, 410, 411, 417, 418, 425, 475
s 2	432
Pt IV	45, 46, 56, 81, 183
Preamble	1, 11, 43, 89, 104
First Recital	4
para 1	7
para 2	4, 14
para 4	6
Art 1	29, 241, 427
Art 1.1	4, 9, 22, 24, 25, 27, 28, 29, 30, 102, 128, 261, 409, 410, 420, 495
Art 1.2	31, 33, 34, 35, 37, 38, 46, 62, 126, 366, 375, 399
Art 1.3	40, 43, 157, 505
Art 2	41, 199, 356
Art 2.1	33, 34, 38, 44, 45, 46, 47, 48, 55, 56, 67, 180, 201
Art 2.2	44, 45, 46, 47, 48, 126, 138, 144, 157, 179, 352
Art 2.5	125
Art 3	9, 26, 33, 53, 54, 55, 56, 61, 62, 73, 78, 80, 227, 315, 356, 491, 492
Art 3.1	32, 43, 45, 51, 53, 55, 57, 62, 227, 258, 352, 505
Art 3.2	52, 63, 64
Art 4	9, 26, 33, 61, 65, 70, 72, 73, 78, 80, 315, 356, 491, 492
(c)	62
(d)	70, 71, 200, 505
Art 5	9, 31, 67, 72, 73, 356, 491, 492
Art 6	3, 31, 78, 79, 80, 82, 84, 187, 297, 356, 359, 440
Art 6.3	356

Art 7	4, 7, 30, 31, 91, 92, 93, 94, 95, 97, 99, 100, 101, 102, 103, 104, 108, 109, 110, 282, 286, 309, 310, 356, 400, 485, 486
Art 7.1	126
Art 8	31, 92, 93, 94, 97, 100, 101, 102, 103, 104, 108, 110, 310, 318
Art 8.1	4, 6, 30, 48, 93, 99, 102, 103, 104, 105, 107, 108, 109, 110, 200, 282, 412, 478, 485, 486
Art 8.2	104, 110, 112, 146, 397, 398, 399, 401, 430
Art 9.1	47, 55, 116, 118, 122, 126, 138, 144, 146, 147, 148, 267
Art 9.2	116, 119, 120, 121, 122, 124
Art 10	227
Art 10.1	123, 124, 126, 132
Art 10.2	38, 125, 126
Art 11	128, 129, 130, 136, 137, 165, 512
Art 12	131, 132, 133
Art 12a(2)(b)	227
Art 13	30, 92, 130, 131, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 155, 157, 167, 194, 267
Art 14	155, 156, 166
Art 14.1	157, 158, 159, 160, 161, 162, 165, 167, 510
Art 14.2	156, 162, 510
Art 14.3	162, 163, 418, 510
Art 14.4	131, 137, 164, 165, 166, 167, 512
Art 14.5	166
Art 14.6	157, 166, 167, 168, 510
Art 15	184
Art 15.1	175, 176, 177, 178, 179, 180, 186, 188, 202
Art 15.2	178, 179, 180
Art 15.3	180, 181, 182, 184, 467
Art 15.4	180, 182
Art 15.5	178, 183, 184, 186
Art 16	182, 184, 227, 228
Art 16.1	184, 185, 186, 187, 188, 197, 266, 418, 419
Art 16.2	188, 189, 190, 192
Art 16.3	192, 193
Art 17	108, 193, 194, 195
Art 18	196, 268
Art 19	196, 197, 198, 199
Art 19.1	197
Art 19.2	198, 468
Art 20	62, 187, 199, 200, 201
Art 21	45, 201, 202, 203, 299, 425
Art 22	226, 228, 231, 232
Art 22.1	217, 219, 221, 233, 236, 239
Art 22.2	221, 223, 231, 233, 375
(a)	221, 226, 228, 229, 230
(b)	225, 229
Art 22.3	230, 231, 234, 471
Art 22.4	231, 234, 239
Art 23	216, 221, 234, 241
Art 23.1	232, 232, 233, 241, 248

Art 23.2	234, 248, 250
Art 23.3	234, 235
Art 23.4	209, 235, 235, 236, 240, 505
Art 24	227, 241, 242, 247
Art 24.1	235, 240, 241, 242
Art 24.2	246, 247, 505
Art 24.3	247, 248
Art 24.4	217, 231, 248, 249, 251
Art 24.5	231, 249, 250
Art 24.6	239, 250, 251
Art 24.7	251
Art 24.8	252
Art 24.9	252
Art 25	257
Art 25.1	260, 261, 262, 263, 264
Art 25.2	264, 265
Art 26	257, 266, 268
Art 26.1	259, 265, 266, 418
Art 26.2	266, 267, 268
Art 26.3	266, 268
Art 27	282
Art 27.1	26, 45, 48, 71, 121, 182, 262, 271, 272, 273, 274, 275, 276, 278, 281, 282, 283, 284, 285, 287, 295, 307, 318, 512, 513
Art 27.2	105, 182, 287, 288, 289, 290, 291
Art 27.3	281, 292
(a)	292
(b)	25, 33, 36, 37, 246, 287, 293, 294, 410
Art 28	7, 79, 80, 86, 102, 283, 295, 299, 485
Art 28.1	187, 266, 285, 294, 295, 297, 299, 331, 359, 418, 489
(a)	82
(b)	298, 496
Art 28.2	295, 299
Art 29	300, 301, 302
Art 29.1	300
Art 29.2	300, 302
Art 30	4, 6, 49, 50, 51, 94, 100, 102, 104, 108, 194, 267, 283, 303, 305, 306, 307, 310, 311, 485, 486, 487
Art 30.3	381
Art 31	48, 100, 104, 109, 283, 299, 311, 313, 314, 315, 318, 320, 332, 333, 425, 508, 512, 513
(a)-(k)	361
(a)	320
(b)	183, 316, 329, 333
(c)	320, 362
(f)	2, 85, 86, 321, 325, 332, 337, 340
(g)	321, 323, 519
(h)	317, 332, 425, 512, 519
(i)	323, 342, 471, 472
(j)	416
(k)	325, 398
(l)	317

Art 31 <i>bis</i>	324, 325, 518
Art 32	342, 343
Art 33	268, 343, 344, 491, 495
Art 34.1	187, 344, 345, 421
Art 34.2	344
Art 34.3	344, 413
Art 35	55, 352, 354, 356, 357, 359
Art 36	355, 357, 358, 360, 418
Art 37	360
Art 37.1	361, 426
Art 37.2	357, 361, 425
Art 38.1	362
Art 38.2	362
Art 38.3	362
Art 39	12, 32, 367, 368, 369, 372, 375, 377, 381, 388, 479
Art 39.1	32, 366, 367, 368, 383, 387, 388, 389
Art 39.2	368, 369, 370, 371, 372, 373, 377, 479
Art 39.3	32, 38, 62, 94, 104, 342, 368, 374, 375, 377, 378, 379, 380, 381, 382, 383, 384, 385, 387, 389, 390, 391
Art 40	31, 94, 300, 395, 399, 400, 423
Art 40.1	398, 399, 400, 401, 402
Art 40.2	400, 401, 402, 403, 404, 430
Art 40.3	400, 404, 405, 406, 478
Art 40.4	405, 406
Arts 41-48	432
Art 41	430
Art 41.1	410, 411, 412, 430, 437
Art 41.2	265, 413, 414, 415, 472
Art 41.3	414, 415, 416, 442, 444
Art 41.4	233, 415, 416, 512
Art 41.5	410, 416, 417, 468, 470
Art 42	32, 35, 160, 233, 413, 417, 418, 419, 442, 446
Art 43	345, 413, 420
Art 43.1	421, 422
Art 43.2	422
Art 44	412, 422
Art 44.1	415, 423, 424, 444
Art 44.2	317, 333, 424, 425, 425, 437
Art 45	412, 426
Art 45.1	412, 427, 431
Art 45.2	426, 427, 431
Art 46	412, 427, 428, 429, 441, 448, 449
Art 47	429, 430
Art 48.1	430, 431, 432, 437
Art 48.2	430, 431, 432, 447, 447
Art 49	432, 438
Art 50	29, 410, 411, 413, 418, 423, 433, 434, 438, 440, 442
Art 50.1	39, 421
(a)	415
(c)	444
Art 50.2	435

Art 50.3	94, 430, 431, 434, 436
Art 50.4	415, 436, 437, 442
Art 50.5	437
Art 50.6	437, 445
Art 50.7	434, 437
Art 50.8	437
Arts 51-60	447
Art 51	46, 84, 175, 411, 423, 434, 438, 439, 440, 441,
Art 52	441, 442
Art 53	442
Art 53.1	443
Art 53.2	430, 443, 445
Art 54	183, 444
Art 55	443, 444, 445, 447
Art 56	445
Art 57	446
Art 58	183, 440, 446, 447
(a)	447
(b)	447
(c)	447
Art 59	441, 447, 449
Art 60	448
Art 61	175, 411, 441, 448, 449, 450
Art 62	467
Art 62.1	467
Art 62.2	468, 469
Art 62.3	175, 470
Art 62.4	414, 470, 471
Art 62.5	416
Art 63	227, 472, 492
Art 63.1	71, 415, 430, 472, 473, 474, 475, 477, 506
Art 63.2	16, 477, 505, 517
Art 63.3	475, 478
Art 63.4	478, 479
Art 63ter(3)(a)	477
Art 64	319, 472, 492
Art 64.2	488
Art 64.3	490
Art 64.4	479
Art 65	227, 241, 294, 494, 511, 515, 516
Art 65.1	491, 492, 494
Art 65.2	246, 491, 492, 493, 494
Art 65.3	491, 492, 493, 494
Art 65.4	281, 491, 493, 494, 515
Art 65.4	9, 507
Art 65.5	247, 248, 494, 495, 499
Art 66	241, 500
Art 66.1	495, 496, 497, 498, 499, 500, 505
Art 66.2	9, 500, 501, 502
Art 66.3	495, 499
Art 66.4	495, 499