In the explanatory note to prepare the answers, the AIPPI provides a number of suggestions, which I will try to fulfill and follow, as far as possible.

When defining trade or industrial secrets, the AIPPI shows a number of names referring to the same fact: trade secret, industrial secret, undisclosed information, secret information, test data, undisclosed data, finishing with unfair competition.

We will observe how these terms are recognized in our legislation, and will call them trade secrets.

The answers to the 12 questions raised, are as follows:

1. **LEGAL DEVELOPMENTS ON TRADE SECRETS.**
   How did trade secret protection evolve in your jurisdiction?

I will refer to this topic stating, in summary, the laws issued in our country over the years; transcribing articles of our interests, which in some way relate to industrial or trade secrets under different names that I will use throughout this work.

   **A) Former laws:**

   I. **Law of Privileges,** of 18 October 1880. The word “secret” appears in the Ecuadorian legislation, rudimentary, in this first law of patents. Article 4 states:

   "The State can buy from the industry the secret of any invention useful for the general benefit"

   This provision is complemented or is consistent, by Article 6 that states:

   "It is prohibited to grant exclusive privileges to inventors of remedies secrets; their publication is a duty of the inventor with the security of a fair compensation".

   II. **Law of Patents of Exclusivity for Exploitation of Inventions,** of 17 July 1928. The secret is again mentioned when stipulating in article 7,

   "Likewise, patent of exclusivity will not be granted to inventors of remedies secrets or therapeutic methods secrets. The inventor, in the event of success, may be compensated for the disclosure that constitutes a duty; the compensation will be fixed on the opinion of the Executive".
III. - The subsequent amendments made on patent laws of years 1929, 1932, 1937, 1961 and 1976, words more or words least, also talk of this principle.

B) Current Laws:

I. - Intellectual Property Law, of 8 May 1998. (Hereinafter Law of 1998) The secret of the inventor disappears. To replace it, we find the following provisions:

a) Chapter IV: Of the Protection Certificates. Articles 163 and 164

The inventor who is developing a project of invention, and requires experimenting any mechanism compelling him to disclose his idea, can request a protection certificate from the IEPI, for the term of one year, preceding to the date of filing the patent, and will enjoy one year priority to file the patent.

b) Chapter VII: Of the Undisclosed information. Articles 183 to 193

This safeguards the protection of undisclosed information on trade and industrial secrets, or any other kind of sensitive information against its acquisition, use or disclosure not authorized by the titleholder. It applies when: information is secret as a whole, or in the configuration and precise composition of its elements; is not known or easily accessible to the people who currently handle this kind of information; information had effective or potential commercial value because it is a secret; and, when the person controlling the information kept it in secret.

Undisclosed information may refer to the nature, characteristics or purposes of the products; to the methods or processes of production; or, to means of distribution or marketing of products or rendering of services. Also to technological knowledge of manufacturing and production, and to the knowledge related to industrial techniques resulting from knowledge, experience or intellectual ability that is kept by a person on confidential basis to maintain or obtain a competitive or economic advantage for third parties.

A minute of the undisclosed information will be executed before a Notary. The minute is to be sent to the IEPI (Regulation: Art. 57).

c) Chapter II: Of the Processes of Intellectual Property. Section 2: Of the Preventive and Precautionary Rulings. Articles 305 al 318

Preventive and precautionary rulings are processed in accordance with Section Twenty Seventh, Title 2, Book 2, of the Code of Civil Procedure, with the amendments to this Section.

To protect trade secrets or confidential information in the implementation of precautionary measures, only the judge or the expert will have access to the information. The defendant and the actor, and persons who have access to the information, will be bound to keep absolute reserve, being subject to the actions prescribed by this and other laws.
Judges shall observe international treaties on Intellectual Property in force in Ecuador, and shall be exempt from liability in accordance with article 48, numeral 2 of the TRIPS.

d) Chapter III: Of the Offences and Penalties. Articles 319 to 331

Whoever discloses, acquires or uses trade or industrial secrets or information, will be punished with three months to three years imprisonment and a fine of 500 to 5000 CVU.

e) Book IV: Of the Unfair Competition. Articles 284 to 287

Unfair competition is all fact, act or practice contrary to the honest use or customs in the developing of economic activities, and covers professionals, such as lawyers, doctors, engineers or from any other arts and crafts.

It is also Unfair Competition the infringement of undisclosed information or other secret data, delivered to the Authority to get the commercialization of pharmaceutical, chemicals, agricultural or industrial products.

f) Title I: Of the Protection and Observance of the Rights of Intellectual Property.

Chapter I: General Principles. Articles 288 to 293

The infringement of any Intellectual Property right will result in civil and administrative actions, without prejudice of penal actions typified as offences.

The administrative tutelage shall be ruled according with Book V. Can also demand the rights stated in international conventions, mainly in the TRIPS.

g) Book V: Of the Administrative Tutelage of the Intellectual Property Rights. Articles 332 to 345

The intellectual property rights are of Public Interest. The State, through the IEPI, performs the administrative tutelage ex officio or upon request of a party, to avoid and punish the infringement of intellectual property rights. The person affected by an infringement, or possible infringement, may request from the IEPI the inspection, information and sanction against el offender.

Precautionary measures will be kept under reserve until they are executed, in order to preserve the undisclosed information. The IEPI will issue resolution punishing the offender with a fine of 20 to 700 CVU. If these were offences, the administrative procedure would be sent before the penal judge. The judicial police will help the IEPI on whatever is requested.
II. - Decision 486 of the Board of the Andean Community of Nations – CAN (Hereinafter Decision 486)

a) Chapter II: Of the Business Secrets. Articles 260 to 266

Business Secret is any undisclosed information, belonging to a person, which can be used in production, industrial or commercial activities, which is transferable to third parties. Whoever legally enjoys of a business secret, will be protected from disclosure, acquisition or use of the secret, in a way contrary to fair business practices, by third parties.

The illicit exploitation, communication or disclosure of a business secret, constitutes unfair competition. In addition, the acquisition and exploitation of the trade secret may be transferred or licensed.

Test or other undisclosed data, when required by the authorities for the approval of the marketing of pharmaceutical, chemical or agricultural products, will be protected against any unfair conventional use.

One may establish terms in which the commercialization of products, based on test data, will not be authorized without the consent of who had filed the test data. The measures of protection will not be granted when test data is prejudicial to public health or food safety. (Decision 632: Clarification on the Second Paragraph of Article 266 of Decision 486).

b) Title XVI: Of the Unfair Competition linked to Intellectual Property. Chapter I: Of the Acts of Unfair Competition: Article 258 and 259

Any act linked to industrial property, in the business field, contrary to honest uses and practices, is considered unfair.

c) Chapter III: Of the Actions for Unfair Competition. Articles 267 to 269

Who has a legitimate interest may request the authority to decide on an act or a business practice. This action prescribes in two years.

d) Title XV: Of the Actions for Violation of Rights. Chapter I: Of the Rights of the Owner. Articles 238 to 244.

The owner of a right may demand before the authority against whoever violates his right or who imminently shall commit an offense.

During the term of proofs, the interests of the actor will be taken into consideration for the protection of his trade secrets.
e) **Chapter II: Of the Precautionary Measures.** Articles 245 to 249.

When an action for infringement is to be started, one may request the authority to order precautionary measures to prevent the infringement, prevent its consequences, and get proofs or to ensure the effectiveness of the action or the compensation for damages and prejudices.

These precautionary measures may be requested before, during or after the action is started.

III. - **Agreements on Intellectual Property Rights Aspects related to Trade - TRIPS (TRIPS in English) (Hereinafter TRIPS)**

Ecuador was the first country in the world joining the TRIPS, in June 1995.

a) **Section 7: Protection of Undisclosed Information.** Articles 39, 42, 43 and 34.3

It guarantees an effective protection against unfair competition, according with Article 10bis of the Paris Convention of 1977. Members shall protect undisclosed information according with paragraph 2. Special protection is granted to sensitive information, as well as to industrial and trade secrets.

IV. - **Paris Convention**


a) **Article 10bis: Unfair Competition.**

All Competition Act, contrary to honest use in industrial or commercial matters, constitutes unfair competition act.

The precepts of the Articles of the TRIPS and of the Paris Convention have been included in the majority of the listed laws.

V. - **The Regulations of the Cooperation Treaty on Patents Matters - PCT**

a) **Regulation- 44ter.** Confidential Character of the Written Opinion, the Report, the Translation and the Remarks.

The International Office does not authorize any person, before 30 months of the date of priority, to access written opinion, translation or written remark.

VI.- **Cooperation Agreement on Industrial Property Matters between the Mexican Institute of Industrial Property - IMPI of the United Mexican States and the Ecuadorian Institute of Intellectual Property - IEPI of the Republic of Ecuador**
a) Article VIII

The exchanged information can be used, except that on which the supplying party had established restriction or reserve of use or disclosure, without his prior consent.

C) Other laws:

I. Constitution of the Republic of Ecuador

a) Chapter Ninth.- Responsibilities

Without prejudice of other provision of the Constitution and in the law, are duties and responsibilities of the Ecuadorians:

12. To practice the profession or occupation subject to ethics.

II. Penal Code

a) Chapter V: Of the Offences against Inviolability of the Secret. Article 200, 201, 202.1 and 361

Undue disclosure of privileged information. - Will be punished with fine of $ 6 to 31 whoever, without being public employee, disseminates actions or procedures that he had known and that, by law, should remain under reserve.

Disclosure of secrets able of causing damage. - Whoever knows, due to its position or occupation, job, profession or art, of a secret which disclosure may cause damage, and would reveals it without fair cause, will be punished with imprisonment of 6 months to 3 years and fine of $ 8 to 77.

Obtainment of Protected Information.- Will be repressed with three years imprisonment and fine of $ 1,000 to 1,500, whoever infringes security systems, using any electronic, computed or alike means to get protected information to infringe trade or industrial secrets.

Likewise, the fraudulent disclosure or use of the protected information of a commercial or industrial secret will be punished with short prison sentence of 3 to 6 years, and a fine of $ 2,000 to 10,000. If a person in charge of using the information performs the disclosure, this will be punished with a short prison sentence of 6 to 9 years, and a fine of $ 2,000 to 10,000.

Disclosure de trade secrets.- Whoever malicious or fraudulently had disseminated trade secrets in which has been or is being employed, will be punished with imprisonment of 3 months to 3 years and a fine of $8 to 62.
III. - Labour Code. Articles 45, 310 and 546

a) Chapter IV: From the Obligations of the Employer and of the Worker

   Obligations of the Worker. - Scrupulously keep technical, trade or manufacture secrets of the products to which manufacturing contributes directly or indirectly, or of which he has knowledge due to the job to run.

b) Chapter IV of Private Employees

   Causes for the terminations of these contracts. - When the employee reveals secrets or makes disclosures that may cause prejudices to the employer.

c) Chapter I of the Organizations and Authorities. Paragraph 3º. Of the Labour Inspectorate

   Responsibility of inspectors and sub-inspectors. - Will be civil and penal responsibly in the event of disclosing, maliciously, the manufacturing and operating procedures he had learned about due to his job to run.

In this long and succinct study of Ecuadorian laws, made to answer question 1, different trade secrets names appear; it may be too broad, but I think it is necessary to understand further questions. Let's continue.

2. TRADE SECRETS

   What is the definition of a trade secret in your jurisdiction?

Trade secrets, under other synonymous names, are found in the Ecuadorian laws about intellectual property.

A) Law of 1998

This law, further to 1995 year in which Ecuador joined TRIPS, incorporated several provisions about Undisclosed Information and Unfair Competition, which are part of the Agreement.

It protects the undisclosed information related with trade and industrial secrets, or any other kind of confidential information, against its acquisition, use or disclosure not authorized by the titleholder. It applies when: the information is secret and is not known by the persons handling this information; has effective or potential commercial value because it is a secret; and, the person who has it had adopted measures to keep it secret.

I think convenient to mention the certificates of protection that covers the inventor when he has developed a project of invention and requires disseminating his idea. He may request a from the Ecuadorian Intellectual Property Institute –IEPI- the authorization to disclose his idea for a term of one year, and request a priority term of one year to file the patent.
It is considered unfair competition all fact, act or practice contrary to the honest uses or customs in the developing of economic activities. The criteria of national trade will be adopted for the definition of honest use; in the context of international operations shall be the criteria prevailing in international trade.

Irrespective of any infringement of undisclosed information, the unfair competition act is defined as any act or practice in the exercise of economic activities, which will result in unfair commercial use of undisclosed test data or other secret data; disclosure of these data, except when necessary to protect the public; and as unauthorized data extraction.

B) Decision 486

This Decision, in force since year 2000, later to the Law of 1998 and the TRIPS of 1995, reflected in its articles several provisions of the Law and of the Agreement.

It defines trade secrets, copying the definition of business secrets of article 183 of the Ecuadorian Law.

That information disclosed under provisions of law, is not considered as a business secret.

Unfair Competition is all act related to industrial property, performed in the business field, which is contrary to the honest uses and practices; it is established that prescribes two years after the unfair act was committed, and allows the authority to act ex officio.

C) The TRIPS

Section 7 discusses the Protection of Undisclosed Information, and remarks that when filing proofs by the contrary, the legitimate interests of the respondents shall be taken into account regarding the protection of their industrial and trade secrets.

To speak of fair and equitable procedure to identify and protect confidential information, requests the States to make available civil judicial procedures to titleholders. When referring to the evidences, it requests conditions to ensure the protection of confidential information.

D) Paris Convention

*Article 10bis*, version 1967 Stockholm Act, obliges the States members to ensure effective protection in favor of the nationals of the countries of the Union, against unfair competition, which is defined as any act of competition contrary to honest practices in industrial and trade fields.

E) Cooperation Agreement in the field of Industrial Property between the IMPI and the IEPI

I think important to refer to this Agreement, because its Article VIII sets that parties may use the exchanged information, unless the party providing it had set restrictions or reservations for use or dissemination. In no case, one party could transfer it to third parties, without prior written consent of the other party.
3. CONTROL OF TRADE SECRETS

Which is the legal entity controlling them?

Who authorizes or controls trade secrets should be discussed with respect to employer-employee relationship?

If I understand the question well, this has two moments:

- First. Who controls trade secrets?

  A) Law de 1998

  The IEPI aims to promote the protection and defense of intellectual property rights, admitted in national legislation and in International Treaties and Agreements. To meet these objectives, orders to process preventive and precautionary measures in accordance with Section XXVII, Title II, of the Code of Civil Procedure.

  For protection of trade secrets or confidential information, in the course of implementation of precautionary measures, only the judge or the expert will have access to the information, codes or other elements; by the side of the defendant, his delegates may be present, and by the side of the actor, his legal procurator. Those who have access to the information, are obliged to keep absolute reserve and shall be subject to the actions deriving from these and other laws for the protection of trade secrets and confidential information.

  Any breach of intellectual property will result in civil and administrative actions, without prejudice of penal ones, if this were felony.

  In case of infringement of the rights recognized by the law, the total value of procedural costs and the rights set in international conventions, especially in the TRIPS, may be required.

  B) Decision 486

  Sets that whoever has legitimate interests may request the authority to pronounce over the legality of an act or business practice. Authority might start an unfair competition action ex officio.

- Second. Refers to employer-employee relationship.

  A') Law of 1998

  When talking of undisclosed information, it is established that any person who due to his work, employment, position, responsibility, profession or business relationship, had access to undisclosed information, shall restrain of disclosing it without the consent of the owner, even when his working relationship had ceased.
B’) Decision 486

In the Decision, Article 265, copies entirely the Article 190 of the Ecuadorian law.

C) Other laws

II. - Penal Code

The Ecuadorian law penalizes civil and criminally to whoever discloses actions or procedures of which has had knowledge. Punishment consists of a fine of $ 6 to 31.

Likewise, the person who discloses secrets, dissemination of which may cause damage, will be punished with imprisonment from 6 months to 3 years and a fine of $ 8 to 77.

Whoever violates security systems to infringe trade or industrial secrets, to obtain protected information, is punished and will be repressed with three years imprisonment and fine of $ 1,000 to 1,500.

The fraudulent disclosure or use of the protected information of a commercial or industrial secret will be punished with short prison sentence of 3 to 6 years, and a fine of $ 2,000 to 10,000. If a person in charge of using the information performs the disclosure, this will be punished with a short prison sentence of 6 to 9 years, and a fine of $ 2,000 to 10,000.

Finally, who reveals a trade secret will be punished with imprisonment from 3 months to 3 years, and a fine of $ 8 to 62.

III. - The Labour Code

The Ecuadorian code gives obligations to workers, and to labour inspectors, when they are asked to keep meticulously technical, trade or manufacturing secrets of the products in which production he direct or indirectly takes part. Inspectors are responsible for civil and criminal proceedings, if they maliciously disseminate the procedures of exploitation they know due to their positions.

Workers are penalized with the termination of the working contracts, if they reveal secrets at expense of the employer.

4. SOURCE OF LAW FOR TRADE SECRET PROTECTION

Which legal provisions regulate the protection of trade secrets?

When I answered question 1, I referred to the history of the secrets, in the Ecuadorian legislation along the time. To refer to point 2, I also touched this question, stating that the first Intellectual Property Law referring to trade secrets is that of 1998, when it talks of Undisclosed Information.

The source of Law is unquestionably the adoption of the TRIPS Agreement, made by Ecuador, as already said, in 1995. Ecuadorian law was much enriched from its
provisions and concepts. Currently, sources of our Law, in chronological order, are the TRIPS Agreement, the 1967 Paris Convention that was adopted by Ecuador in 1999, and Decision 486 since year 2000. In addition, the three laws are part of the Ecuadorian legal system.

Painfully, to date, we have no case law on this matter.

On the other hand, as it is known, according with the doctrine, intellectual property is recognized as one of the rights, the intangible rights.

Unfair competition was already addressed with the reply to point 2.

In the same way, Decision 486 also refers to sources of law, when questions 1 and 2 were analyzed in Chapter II: of Business Secrets.

Finally, the TRIPS and the Paris Convention, in the provisions of sections 7 and Article 10bis, when talking of unfair competition, introduce us to trade secrets.

5. AVAILABLE REMEDIES

What would be an outline on remedies available against trade secret violations in your jurisdiction?

A) Law de 1998

To answer question 2 of the questionnaire, business secrets were studied broadly; however, I will furnish some concepts more about remedies.

The owner of an undisclosed information is considered the person who has effective control of the information, who may prevent that this be made public, acquired or used by third parties, exercising legal actions, and may obtain compensations as appropriate for disclosure, acquisition or unauthorized use. Will be responsible for the disclosure, acquisition or unauthorized use, not only who carry out them, but also those who get benefits.

Commercial espionage, the breach of an obligation, the breach of trust or the acquisition of undisclosed information by a third party who knew, constitute not honest uses or practices.

The information that is provided to any authority by who owns it, to obtain licenses, permits, registration, or any writ of authority, does not fall into the public domain.

Test data is another form of undisclosed information that authority protects against any unfair use.

Another provision referring to the issue may be found when we study unfair competition, which considers unfair competition the infringement of undisclosed information, commercial misuse of test data or other secret data, unauthorized data extraction, and the disclosure of these data, except to the public.
Competition is also unfair, when the acts referring to industrial property are contrary to honest uses and practices. This competition is also legislated when talking of undisclosed information or other secret data.

Administrative tutelage shall be governed by prescriptions of Book V, and it would be possible to require the rights established in international agreements, mainly those under the TRIPS.

Preventive and precautionary measures are processed according with Section XXVII, Title II, Book II of the Code of Civil Procedure, and judges are empowered to order such measures if they were necessary for the urgent protection of rights.

For protection of trade secrets or confidential information, in the course of implementation of precautionary measures, only the judge or the expert will have access to the information, codes or other elements. Defendant may be present through his delegates, and the actor through his legal procurator. Those who have access to the information, are obliged to keep absolute reserve and shall be subject to the actions deriving from these and other laws for the protection of trade secrets. All offences are punishable and subject of enquire ex officio.

Whoever disseminates, acquire or uses trade secrets, industrial secrets or confidential information, may be repressed with 3 months to 3 years imprisonment and a fine of 500 to 5,000 CVU.

On the same issue, those who hinder, breach, or impede the implementation of preventive or precautionary measures, shall be repressed with imprisonment of one month to two years, and a fine of 250 to 2,500 CVU.

As we already said, compliance with intellectual property is of public interests, and the State and the IEPI shall exercise administrative tutelage and shall ensure compliance and enforcement.

Finally, it is set that the petitions filed to obtain precautionary measures, will remain in reserve until they are executed and even after. Necessary measures shall be adopted to preserve confidentiality of undisclosed information, which had been provided in the course of the procedure.

B) Decision 486

In question 2, to define industrial secrets, I referred to remedies. Now, let us refer to other aspects.

Business secret is any undisclosed information that a person has, which may be used in a production, industrial or trade activity, likely to be transmitted to a third party, and when such information is secret, has commercial value, and has been kept secret.

Who has a business industrial secret, will be protected against disclosure, acquisition or use of such secret by third parties. Will constitute unfair competition the following acts regarding business secrets: to exploit, communicate or disclose the business secret
without authorization. To acquire, exploit, communicate or disclose a business secret by unlawful means; to exploit, communicate or disclose a trade secret retrieved from another person.

Unfair is any act performed in the business field, contrary to honest uses and practices. Any act creating confusion regarding the establishment, the products of the industrial or commercial activity of a competitor. The false comments able to discredit the establishment, the products or the industrial or commercial activity of a competitor; or, the indications or asseverations to lead public to an error regarding the nature, way of manufacture, features, suitability or quantity of products.

Precautionary measures are aimed to prevent and avoid the commitment of the infringement, prevent consequences; obtain or retain evidence, or ensure the effectiveness of the action or the payment of damages.

When the defendant is filing proofs in contrary, the protection of his business secrets will be taken into account.

The country members may order the offender to report to the holder of the right, about the identity of third parties who have participated in the production and distribution of the infringing goods.

For the purpose of compensation of damages, shall be calculated the emerging damage and loss of profits; the amount of profits made by the infringer, and the price he would have paid for a license.

Precautionary measures are the immediate cessation of the infringement; the withdrawal of the products, packaging, wrapping, labels, printed material and other materials intended to commit the infringement; the suspension of import or export of the infringing products.

6. PROTECTION OF TRADE SECRETS BEFORE AND AFTER LITIGATION

In the 5 questions answered, I have referred, because it was necessary, to this sixth one. I will try to add something.

I shall begin by saying that we have no jurisprudence on industrial secrets, due to the limited and incipient Ecuadorian industrial development; however, the laws have previewed the protection indeed.

The Law of 1998 establishes that the uses of no honest practices, the disclosure, acquisition or use of undisclosed information contrary to the law, may result from industrial or commercial espionage; failure to comply with legal or contractual obligation; the breach of trust; the acquisition of undisclosed information by a third party that knew, or not know due to negligence.

The responsibility for the disclosure, acquisition or unauthorized use of undisclosed information, contrary to honest practices, will be not only of those who directly perform them, but also of who reap benefits.
The rights set forth in the international agreements in force in Ecuador, mainly TRIPS, may also be required.

Claims relating to intellectual property will be processed in oral summary judgment; the related counterclaim will be admitted and will be decided in judgment. A single expert will be appointed and will appear at an Audience to report orally. To violate this rule is causal to remove the judge.

On the other hand, Decision 486 has also previewed most of the rules commented in the six former paragraphs; therefore, it would be inofficiously to repeat them.

7. LICENSING TRADE SECRETS

What are the relevant or important issues for the contractual aspects of trade secrets?

We have not found anything relating to the subject matter, upon review of Section 7 of the Law of 1998, and Chapter VII of Decision 486, both called “Regime of Obligatory Licenses”.

8. EFFECTIVENESS OF NON-DISCLOSURE AND NON-USE AGREEMENTS

Disclosure as such has no practical efficiency and to ensure protection, it is common that in civil, trade or Labour contracts or agreement, the parameter of use of the information are established.

As already stated, we do not know of legal precedents, available in Ecuador.

In the event of unfair competition, Decision 486 is applied, and in extra for, the Law of 1998.

Our legislation sets certain requirements so that undisclosed information enjoys protection, i.e., adoption of reasonable measures from the legitimate holder of the information to keep it secret, which may include lifetime confidential agreements.

The “inevitable disclosure” U.S. doctrine does not have great practical application in Ecuador.

9. COMMON AND PRACTICAL DEFINITION OF TRADE SECRET

Setting standards is important to define the scope of any concept of trade secrets. In this regard, the Law of 1998, when talking of undisclosed information, defines what we shall understand by trade or industrial secret. This happened when answering question 1, (see page 2.I.b.). Decision 486 rightly establishes a general concept and certain requirements for the protection of undisclosed information; this was also discussed in question 1, (see page 3.II.a.).
10. WHAT IS DESIRED IN YOUR JURISDICTION?

In Ecuador, trade secrets have little application because the procedure of defense is informal. The holder of undisclosed information has the right, as far as the conditions of secret and commercial value remains, and he had adopted reasonable measures to keep that information secret. However, it is difficult to determine if these requirements are met or not; rights that are finally analyzed by the judge upon starting any demand for any infringement thereof.

11. WHAT IS REQUIRED FOR AN IMPROVED GLOBAL STANDARD FOR TRADE SECRET PROTECTION?

An alternative could envisage a procedure with objective protection parameters before a “public authority”, who may issue a “certificate of protection” and should permanently assess whether the secret still satisfy the requirements. This public authority is able to undo or cancel the protection certificates of the trade secrets, ex officio or upon request of third parties.

Possibly, through objective parameters, it may be possible to determine the information that could be considered as trade secret; hence, it would be greater certainty at the time of using this information.

12. WHAT WOULD BE A DESIRABLE AND REALISTIC WAY TO PROCEED?

In developing countries or third countries, such as Ecuador, intellectual property awareness is limited. To expect these countries to make reforms to their laws is a utopia. The best are bilateral, plural-lateral or multilateral agreements. The WTO TRIPS Agreement is an example, where more than 150 countries around the world are present.

13. OTHER COMMENTS

What I am going to set is very personal, as there was no Commission.

Ecuador has had the luck of joining, chronologically, the TRIPS in year 1995, the Paris Convention in 1999, and Decision 486 in 2000. For some people, these accessions have been good; for other, as current Government, has been poor, without knowing anything about Intellectual Property, and wrongly believing to know it.

The TRIPS incorporated the “Protection for Undisclosed Information”, and the Paris Convention referred to “Unfair Competition”, these became the sources of the Ecuadorian Law of 1998. In year 2000 our country incorporation into its legislation, the Decision 486 containing the “Business Secrets”, “Unfair Competition linked to Industrial Property”, and the “Actions for unfair competition”. All these laws state something about the issue of Q.215.

CGV/mv
29/03/2010
Ecuador, chronologically, has adopted the following legal dispositions, relating with the Q.215.

In 1995, the TRIPS, which refer to the Protection for undisclosed information.

In 1998, the Ecuadorian Law on Intellectual Property, which legislated about Certificates of Protection, Undisclosed Information, and Unfair Competition.

In 1999, the Paris Convention, in connection with Unfair Competition.

In 2000, the Decision 486 containing the Business Secrets (test data), Unfair Competition linked to Industrial Property, and Actions for Unfair Competition.

I think all these laws are sufficient for the protection of Trade Secrets.

RÉSUMÉ

Equateur, par ordre chronologique, a adopté les dispositions juridiques suivantes, qui ont à voir avec la Q.215 :

En 1995, les APDIC relative à la protection des renseignements ne pas divulgué.

En 1998, le Loi Équatorienne sur la Propriété Intellectuel que a légiféré sur les Certificats de Protection, des Informations Non Divulguées, et sur la Concurrence Inéquitable.

En 1999, le Convention de Paris, en ce qui a à voir avec la Concurrence Inéquitable.

En 2000, la Décision 486 contenant les Secrets Commerciaux (données de test), la Concurrence Inéquitable liés à la Propriété Industrielle, et les actions par Concurrence Inéquitable.

Je crois que toutes ces lois sont suffisantes pour la protection des Secrets Commerciaux.

ZUSAMMENFASSUNG

Ecuador, erlassen chronologisch, die folgenden rechtlichen Bestimmungen, die mit der Q.215 zu tun hat:

Im Jahre 1995 das TRIPS-Übereinkommen über den Schutz von Informationen nicht weitergegeben.


Im Jahr 1999, Paris Übereinkommen, hat in was mit der unlautere Wettbewerb zu tun.

Im Jahr 2000, die Entscheidung 486 über die Geschäftgeheimnisse erhalten (Testdaten), verknüpft der unlautere Wettbewerb gewerblichen und Aktionen durch den unlauteren Wettbewerb.