

APPENDIX 3

Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Dunkel Draft), excerpts pertaining to TRIPS

MTN.TNC/W/FA
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This document is being tabled by the Chairman of the Trade Negotiations Committee at Official Level with the following understanding:

- (a) It offers a concrete and comprehensive representation of the final global package of the results of the Uruguay Round;
- (b) No single element of the Draft Final Act can be considered as agreed till the total package is agreed;
- (c) Final agreement on the attached Draft Final Act will depend on substantial and meaningful results for all parties being achieved in the ongoing market access negotiations, including those related to tariffs and non-tariff measures: this applies to areas such as natural resource-based products, tropical products, agriculture and textiles and clothing.
- (d) Final agreement similarly applies to the ongoing negotiations pertaining to initial liberalization commitments in the area of services.

**AGREEMENT ON TRADE-RELATED ASPECTS
OF INTELLECTUAL PROPERTY RIGHTS,
INCLUDING TRADE IN COUNTERFEIT GOODS (Annex III)**

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AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS

The PARTIES to this Agreement (hereinafter referred to as “PARTIES”),

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognising, to this end, the need for new rules and disciplines concerning:

- (a) the applicability of the basic principles of the GATT and of relevant international intellectual property agreements or conventions;
- (b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;
- (c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;
- (d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and
- (e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognising the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognising that intellectual property rights are private rights;

Recognising the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognising also the special needs of the least-developed countries in respect of maximum flexibility in the domestic implementation of laws and

regulations in order to enable them to create a sound and viable technological base;

Emphasising the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between GATT and WIPO as well as other relevant international organisations;

Hereby agree as follows:

PART I: GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1: Nature and Scope of Obligations

1. PARTIES shall give effect to the provisions of this Agreement. PARTIES may, but shall not be obliged to, implement in their domestic law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. PARTIES shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.
2. For the purposes of this Agreement, the term “intellectual property” refers to all categories of intellectual property that are the subject of Sections 1 to 7 of Part II.
3. PARTIES shall accord the treatment provided for in this Agreement to the nationals of other PARTIES.¹ In respect of the relevant intellectual property right, the nationals of other PARTIES shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all PARTIES members of those conventions. Any PARTY availing itself of the possibilities provided in Articles 5.3 or 6.2 of the Rome Convention shall make a notification as foreseen in those provisions to the Council on Trade-Related Aspects of Intellectual Property Rights.

Article 2: Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, PARTIES shall comply with Articles 1-12 and 19 of the Paris Convention (1967).
2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that PARTIES may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

1 When “nationals” are referred to in this Agreement, they shall be deemed, in the case of Hong Kong, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in Hong Kong.

Article 3: National Treatment

1. Each PARTY shall accord to the nationals of other PARTIES treatment no less favourable than that it accords to its own nationals with regard to the protection¹ of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasters, this obligation only applies in respect of the rights provided under this Agreement. Any PARTY availing itself of the possibilities provided in Article 6 of the Berne Convention and Article 16.1(b) of the Rome Convention shall make a notification as foreseen in those provisions to the Council on Trade-Related Aspects of Intellectual Property Rights.

2. PARTIES may avail themselves of the exceptions permitted under paragraph 1 above in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a PARTY, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4: Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a PARTY to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other PARTIES. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a PARTY:

- (a) deriving from international agreements on judicial assistance and law enforcement of a general nature and not particularly confined to the protection of intellectual property rights;
- (b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorising that the treatment

¹ For the purposes of Articles 3 and 4 of this Agreement, protection shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in the Agreement.

accorded be a function not of national treatment but of the treatment accorded in another country;

- (c) in respect of the rights of performers, producers of phonograms and broadcasters not provided under this Agreement;
- (d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of this Agreement, provided that such agreements are notified to the Council on Trade-Related Aspects of Intellectual Property Rights and do not constitute an arbitrary or unjustifiable discrimination against nationals of other PARTIES.

Article 5: Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 above do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 6: Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 above nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7: Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8: Principles

1. PARTIES may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9: Relation to Berne Convention

1. PARTIES shall comply with Articles 1-21 and the Appendix of the Berne Convention (1971). However, PARTIES shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10: Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11: Rental Rights

In respect of at least computer programs and cinematographic works, a PARTY shall provide authors and their successors in title the right to authorise or to prohibit the commercial rental to the public of originals or copies of their copyright works. A PARTY shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that PARTY on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12: Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than fifty years from the end of the calendar year of authorised publication, or, failing such authorised publication within fifty years from the making of the work, fifty years from the end of the calendar year of making.

Article 13: Limitations and Exceptions

PARTIES shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14: Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasts

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorisation: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorisation: the broadcasting by wireless means and the communication to the public of their live performance.
2. Producers of phonograms shall enjoy the right to authorise or prohibit the direct or indirect reproduction of their phonograms.
3. Broadcasting organisations shall have the right to prohibit the following acts when undertaken without their authorisation: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where PARTIES do not grant such rights to broadcasting organisations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).
4. The provisions of Article 11 in respect of computer programs shall apply mutatis mutandis to producers of phonograms and any other right holders in phonograms as determined in domestic law. If, on the date of signature of this Agreement, a PARTY has in force a system of equitable remuneration of right holders, it may maintain such system provided that the commercial rental of

phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of fifty years computed from the end of the calendar year in which the fixation was made or the performance or broadcast took place. The term of protection granted pursuant to paragraph 3 above shall last for at least twenty years from the end of the calendar year in which the broadcast took place.

6. Any PARTY to this Agreement may, in relation to the rights conferred under paragraphs 1-3 above, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, mutatis mutandis, to the rights of performers and producers of phonograms in phonograms.

SECTION 2: TRADEMARKS

Article 15: Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, PARTIES may make registrability depend on distinctiveness acquired through use. PARTIES may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 above shall not be understood to prevent a PARTY from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. PARTIES may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not

taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. PARTIES shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, PARTIES may afford an opportunity for the registration of a trademark to be opposed.

Article 16: Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having his consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of PARTIES making rights available on the basis of use.

2. Article 6bis of the Paris Convention shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in that PARTY obtained as a result of the promotion of the trademark.

3. Article 6bis of the Paris Convention shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17: Exceptions

PARTIES may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18: Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19: Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognised as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognised as use of the trademark for the purpose of maintaining the registration.

Article 20: Other Requirements

The use of a trademark in commerce shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21: Licensing and Assignment

PARTIES may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign his trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22: Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a PARTY, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
2. In respect of geographical indications, PARTIES shall provide the legal means for interested parties to prevent:
 - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
 - (b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).
3. A PARTY shall, ex officio if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that PARTY is of such a nature as to mislead the public as to the true place of origin.
4. The provisions of the preceding paragraphs of this Article shall apply to a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23: Additional Protection for Geographical Indications for Wines and Spirits

1. Each PARTY shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical

indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like.¹

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, ex officio if domestic legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22 above. Each PARTY shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council on Trade-Related Aspects of Intellectual Property Rights concerning the establishment of a multilateral system of notification and registration of geographical indications eligible for protection in those PARTIES participating in the system.

Article 24: International Negotiations; Exceptions

1. PARTIES agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4-8 below shall not be used by a PARTY to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, PARTIES shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council on Trade-Related Aspects of Intellectual Property Rights shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of this Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a PARTY, shall consult with any PARTY or PARTIES in respect of such matter in

1 Notwithstanding the first sentence of Article 42, PARTIES may, with respect to these obligations, instead provide for enforcement by administrative action.

respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the PARTIES concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a PARTY shall not diminish the protection of geographical indications that existed in that PARTY immediately prior to the date of entry into force of this Agreement.

4. Nothing in this Section shall require a PARTY to prevent continued and similar use of a particular geographical indication of another PARTY identifying wines in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that PARTY either (a) for at least ten years preceding its signature of this Agreement or (b) in good faith preceding its signature of this Agreement.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

- (a) before the date of application of these provisions in that PARTY as defined in Part VI below; or
- (b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a PARTY to apply its provisions in respect of a geographical indication of any other PARTY with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that PARTY. Nothing in this Section shall require a PARTY to apply its provisions in respect of a geographical indication of any other PARTY with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that PARTY as of the date of entry into force of this Agreement.

7. A PARTY may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five

years after the adverse use of the protected indication has become generally known in that PARTY or after the date of registration of the trademark in that PARTY provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that PARTY, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, his name or the name of his predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25: Requirements for Protection

1. PARTIES shall provide for the protection of independently created industrial designs that are new or original. PARTIES may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. PARTIES may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each PARTY shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. PARTIES shall be free to meet this obligation through industrial design law or through copyright.

Article 26: Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. PARTIES may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
3. The duration of protection available shall amount to at least ten years.

SECTION 5: PATENTS

Article 27: Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3 below, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.¹ Subject to paragraph 4 of Article 65 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.
2. PARTIES may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by domestic law.
3. PARTIES may also exclude from patentability:
 - (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
 - (b) plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, PARTIES shall provide for the protection of plant varieties either by

¹ For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a PARTY to be synonymous with the terms "non-obvious" and "useful" respectively.

patents or by an effective sui generis system or by any combination thereof. This provision shall be reviewed four years after the entry into force of this Agreement.

Article 28: Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:
 - (a) where the subject matter of a patent is a product, to prevent third parties not having his consent from the acts of: making, using, offering for sale, selling, or importing¹ for these purposes that product;
 - (b) where the subject matter of a patent is a process, to prevent third parties not having his consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29: Conditions on Patent Applicants

1. PARTIES shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.
2. PARTIES may require an applicant for a patent to provide information concerning his corresponding foreign applications and grants.

Article 30: Exceptions to Rights Conferred

PARTIES may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

¹ This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6 above.

Article 31: Other Use Without Authorisation of the Right Holder

Where the law of a PARTY allows for other use¹ of the subject matter of a patent without the authorisation of the right holder, including use by the government or third parties authorised by the government, the following provisions shall be respected:

- (a) authorisation of such use shall be considered on its individual merits;
- (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorisation from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a PARTY in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorised;
- (d) such use shall be non-exclusive;
- (e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (f) any such use shall be authorised predominantly for the supply of the domestic market of the PARTY authorising such use;
- (g) authorisation for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorised, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorisation; reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid

¹ "Other use" refers to use other than that allowed under Article 30.

patent is or will be used by or for the government, the right holder shall be informed promptly;

- (i) the legal validity of any decision relating to the authorisation of such use shall be subject to judicial review or other independent review by a distinct higher authority in that PARTY;
- (j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that PARTY;
- (k) PARTIES are not obliged to apply the conditions set forth in subparagraphs (b) and (f) above where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorisation if and when the conditions which led to such authorisation are likely to recur;
- (l) where such use is authorised to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:
 - (i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance, in relation to the invention claimed in the first patent;
 - (ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and
 - (iii) the use authorised in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32: Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33: Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.¹

Article 34: Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in Article 28.1(b), if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, PARTIES shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

- (a) if the product obtained by the patented process is new;
- (b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any PARTY shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in sub-paragraph (a) is fulfilled or only if the condition referred to in sub-paragraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

1 It is understood that those PARTIES which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35: Relation to IPIC Treaty

PARTIES agree to provide protection to the layout-designs (topographies) of integrated circuits (hereinafter referred to as “layout-designs”) in accordance with Articles 2-7 (other than Article 6.3), 12 and 16.3 of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on 26 May 1989 and, in addition, to comply with the following provisions.

Article 36: Scope of the Protection

Subject to the provisions of Article 37.1 below, PARTIES shall consider unlawful the following acts if performed without the authorisation of the holder of the right: importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout-design.

Article 37: Acts not Requiring the Authorisation of the Holder of the Right

1. Notwithstanding Article 36 above, no PARTY shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. PARTIES shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, he may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the holder of the right a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in sub-paragraphs (a)-(k) of Article 31 above shall apply mutatis mutandis in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorisation of the right holder.

Article 38: Term of Protection

1. In PARTIES requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of ten years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.
2. In PARTIES not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than ten years from the date of the first commercial exploitation wherever in the world it occurs.
3. Notwithstanding paragraphs 1 and 2 above, a PARTY may provide that protection shall lapse fifteen years after the creation of the layout-design.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), PARTIES shall protect undisclosed information in accordance with paragraph 2 below and data submitted to governments or governmental agencies in accordance with paragraph 3 below.
2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices¹ so long as such information:
 - is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - has commercial value because it is secret; and

1 For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

- has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. PARTIES, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, PARTIES shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 40

1. PARTIES agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent PARTIES from specifying in their national legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a PARTY may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that PARTY.

3. Each PARTY shall enter, upon request, into consultations with any other PARTY which has cause to believe that an intellectual property right owner that is a national or domiciliary of the PARTY to which the request for consultations has been addressed is undertaking practices in violation of the requesting PARTY's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either PARTY. The PARTY addressed shall accord full and sympathetic consideration to, and shall

afford adequate opportunity for, consultations with the requesting PARTY, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the PARTY, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting PARTY.

4. A PARTY whose nationals or domiciliaries are subject to proceedings in another PARTY concerning alleged violation of that other PARTY's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other PARTY under the same conditions as those foreseen in paragraph 3 above.

PART III: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. PARTIES shall ensure that enforcement procedures as specified in this Part are available under their national laws so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the dispute without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a dispute shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in national laws concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws in general, nor does it affect the capacity of PARTIES to enforce their laws in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of laws in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42: Fair and Equitable Procedures

PARTIES shall make available to right holders¹ civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 43: Evidence of Proof

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing

¹ For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a PARTY may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 44: Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. PARTIES are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorised by a government, without the authorisation of the right holder are complied with, PARTIES may limit the remedies available against such use to payment of remuneration in accordance with sub-paragraph (h) of Article 31 above. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with national law, declaratory judgments and adequate compensation shall be available.

Article 45: Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of his intellectual property right by an infringer who knew or had reasonable grounds to know that he was engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees.

In appropriate cases, PARTIES may authorise the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not know or had no reasonable grounds to know that he was engaged in infringing activity.

Article 46: Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47: Right of Information

PARTIES may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48: Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, PARTIES shall only exempt both public

authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of such laws.

Article 49: Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:
 - (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
 - (b) to preserve relevant evidence in regard to the alleged infringement.
2. The judicial authorities shall have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.
3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that his right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.
4. Where provisional measures have been adopted inaudita altera parte, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place

upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4 above, provisional measures taken on the basis of paragraphs 1 and 2 above shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where national law so permits or, in the absence of such a determination, not to exceed twenty working days or thirty-one calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES¹

Article 51: Suspension of Release by Customs Authorities

PARTIES shall, in conformity with the provisions set out below, adopt procedures² to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods³ may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. PARTIES may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. PARTIES may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52: Application

Any right holder initiating the procedures under Article 51 above shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of his intellectual property right and to supply a sufficiently detailed description of

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- 1 It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.
 - 2 Where a PARTY has dismantled substantially all controls over movement of goods across its border with another PARTY with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.
 - 3 For the purposes of this Agreement:
 - counterfeit trademark goods shall mean any goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
 - pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorised by him in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

the goods to make them readily recognisable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53: Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, integrated circuits or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue his right of action within a reasonable period of time.

Article 54: Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51 above.

Article 55: Duration of Suspension

If, within a period not exceeding ten working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another ten working days. If proceedings leading

to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of Article 50, paragraph 6 above shall apply.

Article 56: Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55 above.

Article 57: Right of Inspection and Information

Without prejudice to the protection of confidential information, PARTIES shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any product detained by the customs authorities inspected in order to substantiate his claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such product inspected. Where a positive determination has been made on the merits of a case, PARTIES may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58: Ex Officio Action

Where PARTIES require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

- (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
- (b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out at Article 55 above;

- (c) PARTIES shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59: Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46 above. In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60: De Minimis Imports

PARTIES may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

Article 61

PARTIES shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. PARTIES may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV: ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES

Article 62

1. PARTIES may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2-6 of Part II of this Agreement, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.
2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, PARTIES shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.
3. Article 4 of the Paris Convention (1967) shall apply mutatis mutandis to service marks.
4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where the national law provides for such procedures, administrative revocation and inter partes procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.
5. Final administrative decisions in any of the procedures referred to under paragraph 4 above shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V: DISPUTE PREVENTION AND SETTLEMENT

Article 63: Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by any PARTY pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of any PARTY and the government or a governmental agency of any other PARTY shall also be published.
2. PARTIES shall notify the laws and regulations referred to in paragraph 1 above to the Council on Trade-Related Aspects of Intellectual Property Rights in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimise the burden on PARTIES in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with the World Intellectual Property Organisation on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6ter of the Paris Convention (1967).
3. Each PARTY shall be prepared to supply, in response to a written request from another PARTY, information of the sort referred to in paragraph 1 above. A PARTY, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.
4. Nothing in paragraphs 1 to 3 above shall require PARTIES to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64: Dispute Settlement

The provisions of Articles XXII and XXIII of the General Agreement on Tariffs and Trade and the Understanding on Rules and Procedures Governing the Settlement of Disputes under Articles XXII and XXIII of the General Agreement on Tariffs and Trade as adopted by the CONTRACTING PARTIES shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.¹

PART VI: TRANSITIONAL ARRANGEMENTS

Article 65: Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4 below, no PARTY shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of this Agreement.
2. Any developing country PARTY is entitled to delay for a further period of four years the date of application, as defined in paragraph 1 above, of the provisions of this Agreement other than Articles 3, 4 and 5 of Part I.
3. Any other PARTY which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws, may also benefit from a period of delay as foreseen in paragraph 2 above.
4. To the extent that a developing country PARTY is obliged by this Agreement to extend product patent protection to areas of technology not protectable in its territory on the general date of application of this Agreement for that PARTY, as defined in paragraph 2 above, it may delay the application of Section 5 of Part II of this Agreement to such areas of technology for an additional period of five years.

¹ This provision may need to be revised in the light of the outcome of work on the establishment of an Integrated Dispute Settlement Understanding under the Agreement Establishing the Multilateral Trade Organisation.

5. Any PARTY availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its domestic laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66: Least-Developed Countries

1. In view of their special needs and requirements, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, least-developed country PARTIES shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65 above. The Council shall, upon duly motivated request by a least-developed country PARTY, accord extensions of this period.

2. Developed country PARTIES shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country PARTIES in order to enable them to create a sound and viable technological base.

Article 67: Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country PARTIES shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country PARTIES. Such cooperation shall include assistance in the preparation of domestic legislation on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII: INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 68: Council on Trade-Related Aspects of Intellectual Property Rights

The Council on Trade-Related Aspects of Intellectual Property Rights shall monitor the operation of this Agreement and, in particular, PARTIES' compliance with their obligations hereunder, and shall afford PARTIES' the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the PARTIES, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council may consult with and seek information from any source it deems appropriate. In consultation with the World Intellectual Property Organization, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69: International Cooperation

PARTIES agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their national administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit and pirated goods.

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 PARTY 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 PARTY in question, and which is protected in that PARTY 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 below, obligations with respect to existing

copyrighted works shall be solely determined under Article 18 of the Berne Convention (1971), and 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 Article 14.6 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 PARTY 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 ratification of this Agreement by that PARTY, any PARTY 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 the Agreement for that PARTY. In such cases the PARTY shall, however, at least provide for the payment of equitable remuneration.

5. A PARTY 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 PARTY.

6. PARTIES shall not be required to apply Article 31, or the requirement in Article 27.1 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorisation of the right holder where authorisation 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 PARTY 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 PARTY does not make available as of the date of entry into force of this Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that PARTY shall:

- (i) provide as from the date of entry into force of the Agreement a means by which applications for patents for such inventions can be filed;

- (ii) 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 PARTY or, where priority is available and claimed, the priority date of the application;
- (iii) 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 sub-paragraph (ii) above.

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

Article 71: Review and Amendment

1. PARTIES shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65 above. They shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The PARTIES may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted by all PARTIES may be adopted by the Council.

Article 72: Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other PARTIES.

Article 73: Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require any PARTY to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any PARTY from taking any action which it considers necessary for the protection of its essential security interests;
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) taken in time of war or other emergency in international relations;
or
- (c) to prevent any PARTY from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.