RESTRICTED
MTN.GNG/NG11/W/68
29 March 1990
Special Distribution

Original: English/

Negotiating Group on Trade-Related Aspects
of Intellectual Property Rights, including
Trade in Counterfeit Goods

DRAFT AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

The attached draft agreement, dated 27 March 1990, has been received from the delegation of the European Communities, with the request that it be circulated to members of the Negotiating Group.

DRAFT AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

CONTRACTING PARTIES

[preamble]

Hereby agree that the following
paragraph shall become Article IX bis
of the General Agreement:

The contracting parties agree to provide effective and adequate protection of intellectual property rights in order to ensure the reduction of distortions and impediments to international trade. The protection of intellectual property rights shall not itself create barriers to legitimate trade. They therefore agree that they will provide for protection of intellectual property rights under their domestic laws and practices in conformity with the rules and disciplines set out in Annex II.

ANNEX II

RULES AND DISCIPLINES ON THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS(1)

Nothing in this Annex shall derogate from existing rights and obligations under the GATT. Unless expressly stated otherwise, nothing in this Annex shall prevent contracting parties from granting more extensive protection to intellectual property rights than that provided for in this Annex. This Annex only creates obligations and rights between contracting parties and creates no direct rights for individuals.

Contracting parties shall provide for the protection of intellectual property rights under their domestic law and practice in accordance
with the following provisions:

PART 1: GENERAL PROVISIONS

Article 1 Intellectual Property Conventions

Contracting parties shall in their domestic law and practice comply with the substantive provisions ofthe Paris Convention for the Protection of Industrial Property as revised at Stockholm in 1967, and of the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris in 1971. In addition, they shall comply with the provisions of this Annex.

Article 2 National Treatment

In addition to the full application of the provisions of Article III of the General Agreement, contracting parties shall accord to the nationals(2) of other contracting parties treatment no less favourable than that accorded to nationals with regard to the protection of intellectual property rights subject to the exceptions already provided for in, respectively, the Paris Convention and the Berne Convention as referred to in Article 1 above, as well as in other existing conventions on intellectual property administered exclusively or jointly by the World Intellectual Property Organisation.(1)

(1) Throughout this Annex "intellectual property" is to be understood as encompassing all subject matters covered by Part 2.

Throughout this Annex the term "right holder" means the right holder himself, any other natural or legal persons authorised by him, or persons, including federations and associations, having legal standing under domestic law to assert such rights.

(2) The term "nationals" shall be understood as those natural or legal persons qualified for protection under the relevant international conventions on intellectual property administered exclusively or jointly by the WIPO subject to the reservations permitted by those conventions.

Article 3 Most Favoured Nation Treatment/Non-Discrimination

In addition to the full application of Article I of the General Agreement, contracting parties shall ensure that the protection of intellectual property rights is not carried out in a manner which would constitute an arbitrary or unjustifiable discrimination between nationals of a contracting party and those of any other country or which would constitute a disguised restriction on international trade.

Article 4 Customs Unions and Free Trade Areas

Contracting parties which constitute a customs union or free trade area within the meaning of Article XXIV of the General Agreement may apply to one another measures relating to the protection of intellectual property rights without extending them to other contracting parties, in order to facilitate trade between their territories.

PART 2: STANDARDS IN THE FIELD OF INTELLECTUAL PROPERTY

A. Copyright and related rights

Article 1 Rights of Authors

Authors and their successors in title shall enjoy the rights conferred upon them by the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works of 24 July 1971.

Article 2 Computer Programs

For the purpose of Article 1, computer programs shall be protected as literary works.

Article 3 Rights of Authors concerning Rental

(1) Authors and their successors in title shall, at least in the case of cinematographic works and computer programmes, have the exclusive right to authorise or prohibit the rental of originals and copies of the copyright works.

(2) In circumstances where such an exclusive right has not been established, contracting parties shall provide for an equitable remuneration to be obtained in the rental of originals or copies of their protected works corresponding to the economic value of such a use.

(3) For the purposes of paragraphs (1) and (2), "rental" means the making available, for a limited period of time and for direct profit-making purposes, of a protected work or copies of such a work.

(4) There shall be no obligation to provide for a rental right in respect of works of applied art or architecture.

Article 4 Rights of Phonogram Producers

Producers of phonograms shall enjoy the right to authorise or prohibit the direct or indirect reproduction of their phonograms. The provisions of article 3 paragraphs (1), (2) and (3) shall apply mutatis mutandis in respect of the producers of phonograms.

Article 5 Rights of Performers

The protection provided for performers shall include the possibility of preventing :

(a) the broadcasting by wireless means and the communication to the public* of their live performance;

(b) the fixation of their unfixed performance; and

(c) the reproduction of a fixation of their performance.

Article 6 Rights of Broadcasting Organisations

Broadcasting organisations shall enjoy the right to authorise or prohibit :

(a) the fixation of their broadcasts;

(b) the reproduction of fixations;

(c) the communication to the public* of their television broadcasts; and

(d) the rebroadcasting by wireless means of their broadcasts.

Article 7 Public Communication of Phonograms

If a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used directly for broadcasting or for any communication to the public*, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonogram, or to both.

Article 8 Exceptions

Contracting parties may, in relation to the rights conferred by Articles 4, 5, 6, and 7 provide for limitations, exceptions and reservations as permitted by the Rome Convention for the Protection of Perfomers, Producers of Phonograms and Broadcasting Organisations of 26 October 1961.

_____

* Participants may wish to consider the need for a definition of the term "public".

Article 9 Term of Protection

(1) The term of protection granted to producers of phonograms, performers and broadcasting organisations shall last at least until the end of a period of 50 years computed from the end of the year in which the fixation was made or the performance or broadcast took place.

(2) Contracting parties may, however, provide for a period of protection of less than 50 years provided that the period of protection lasts at least for 25 years and that they otherwise assume a substantially equivalent protection against piracy for an equivalent period.

B. Trademarks

Article 10 Protectable Subject Matter

(1) Trademark protection shall be granted. Trademarks may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.

(2) Protection shall be denied in particular to marks which are

(i) devoid of any distinctive character,

(ii) contrary to public order or to accepted principles of morality,

(iii) of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or services, and

(iv) in conflict with earlier rights.

(3) The term "trademark" shall include service marks and collective marks.

Article 11 Acquisition of Rights

A trademark right may be acquired by registration or by use. For the acquisition of trademark rights by use, contracting parties may require
that such use has resulted in a reputation of the trademark. A system for the registration of trademarks shall be provided. Use of a trademark prior to registration shall not be a condition for registration. Contracting parties are encouraged to participate in a system for the international registration of trademarks.

Article 12 Rights Conferred

(1) The proprietor of a registered trademark shall have exclusive rights therein. He shall be entitled 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 protected, where such use would result in a likelihood of confusion. However, in case of the use of an identical sign for identical goods or services, a likelihood of confusion shall not be required.

(2) Protection for registered or unregistered trademarks shall extend under trademark law or other law to the use in the course of trade of any sign which is identical with, or similar to, the trademark in relation to goods or services which are not similar to those in respect of which the trademark is protected, where the latter has a reputation and where use of that sign without due cause takes unfair advantage of or is detrimental to the distinctive character or the repute of the trademark.

(3) The proprietor of a trademark, whether acquired by registration or use, shall be entitled to take action against any unauthorised use which constitutes an act of unfair competition or passing off.

Article 13 Exceptions

Limited exceptions to the exclusive rights conferred by a trademark, such as fair use of descriptive terms, may be made, provided that they take account of the legitimate interests of the proprietor of the trademark and of third parties.

Article 14 Term of Protection

The registration of a trademark shall be indefinitely renewable. Initial registration of a trademark shall in general be for a term of 10 years.

Article 15 Requirement of Use

(1) If use of a registered mark is required to maintain trademark rights, the registration may be cancelled or protection may be denied only after an uninterrupted period of at least five years of non-use, unless legitimate reasons for non-use exist. Use of the trademark by another person with the consent of the right holder shall be recognised as use of the trademark for the purpose of maintaining the registration.

(2) Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the proprietor of a trademark (such as import restrictions or other government regulations on products protected by the trademark) which constitute an obstacle to the use of the trademark.

Article 16 Other Requirements

The use of a trademark shall not be unjustifiably encumbered by special requirements, such as use with another trademark or a requirement which reduces the function of a trademark as an indication of source.

Article 17 Licensing

Compulsory licensing of trademarks shall not be permitted.

Article 18 Transfer

Trademarks may be transferred with or without the transfer of the undertaking to which they belong.

C. Geographical indications including appellations of origin

Article 19 Protected Indications

Geographical indications are, for the purpose of this agreement, those which designate a product as originating from a country, region or locality where a given quality, reputation or other characteristic of the product is attributable to its geographical origin, including natural and human factors.

Article 20 Restricted Acts

(1) Geographical indications shall be protected against any use which constitutes an act of unfair competition, including use which is susceptible to mislead the public as to the true origin of the product. Shall notably be considered to constitute such use :

- any direct or indirect use in trade in respect of products not coming from the place indicated or evoked by the geographical indication in question;

- any usurpation, imitation or evocation, even where the true origin of the product is indicated or the appellation or designation is used in translation or accompanied by expressions such as "kind",

"type", "style", "imitation" or the like;

- the use of any means in the designation or presentation of the product likely to suggest a link between the product and any geographical area other than the true place of origin.

(2) Where appropriate, protection should be accorded to appellations of origin, in particular for products of the vine, to the extent that it is accorded in the country of origin.

Article 21 Protective Measures

(1) Appropriate measures shall be taken under national law for interested parties to prevent a geographical indication from developing into a designation of generic character as a result of the use in trade for products from a different origin, it being understood that appellations of origin for products of the vine shall not be susceptible to develop into generic designations.

(2) The registration of a trademark which contains or consists of a geographical or other indication denominating or suggesting a country, region or locality with respect to goods not having this origin shall be refused or invalidated. National laws shall provide the possibility for interested parties to oppose the use of such a trademark.

(3) In order to facilitate the protection of geographical indications including appellations of origin, an international register for protected indications shall be established. In appropriate cases the use of documents certifying the right to use the relevant geographical indication should be provided for.

D. Industrial designs and models

Article 22

(1) Industrial designs and models which are original or novel shall be protected in conformity with the relevant provisions of the Paris Convention. They may also be protected under copyright law.

(2) The protection conferred shall permit the proprietor to prevent at least the manufacture, the sale, or the importation for commercial purposes, of an object which is the subject matter of the model or design right.

(3) The term of protection made available shall be at least 10 years. Where protection is subject to registration, the contracting parties shall provide for an initial term of protection of at least 5 years, with a possibility of renewal for at least another period of 5 years.

E. Patents

Article 23 Patentable Subject Matter

(1) Patents shall be granted for any inventions, whether products or processes, which are susceptible of industrial application, which are new and which involve an inventive step.

(2) Contracting parties may exclude from patentability:

- inventions, the publication or exploitation of which would be contrary to "ordre public" or morality;

- plant or animal varieties or essentially biological processes for the production of plants or animals; this does not apply to microbiological processes or the products thereof.

(3) Contracting parties shall provide for the protection of plant varieties by patents and/or by an effective sui generis system.

(4) Patents shall be available according to the first-to-file principle.

Article 24 Rights Conferred

(1) A patent shall confer on the proprietor at least the following exclusive rights. The proprietor shall be entitled to prevent third parties not having his consent from making, offering, putting on the market or using a product which is the subject matter of the patent, or importing or stocking the product for these purposes. In the case of a patented process, the patent confers on its proprietor the right to prevent others not having his consent from using that process and from offering, putting on the market, using, or importing or stocking for these purposes the product obtained directly by that process.

(2) Limited exceptions to the exclusive rights conferred by a patent may be made for certain acts, such as rights based on prior use, acts done privately and for non-commercial purposes and acts done for experimental purposes, provided that they take account of the legitimate interests of the proprietor of the patent and of third parties.

(3) A patent may not be revoked on grounds of non-working.

(4) If the subject-matter of a patent is a process for obtaining a new product, the same product when produced by any other party shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process. 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.

Article 25 Term of Protection

The term of protection made available shall be at least 20 years from the date of filing of the application. Contracting parties are encouraged to extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

Article 26 Compulsory Licences

Where the law of a contracting party allows for the grant of compulsory licences, such licences shall not be granted in a manner which distorts trade, and the following provisions shall be respected :

(1) Compulsory licences shall be non-exclusive and non-assignable except with that part of the enterprise or goodwill which exploits such licence.

(2) They shall provide for the payment of an equitable remuneration to the right holder corresponding to the economic value of the licence.

(3) Except in the case of a manifest national emergency, a compulsory licence may only be issued after unsuccessful efforts made by the applicant in line with normal commercial practices to negotiate a voluntary

licence with the right holder.

(4) Compulsory licences may not be issued for non-working or insufficiency of working on the territory of the granting authority if the right holder can show that the lack or insufficiency of local working is justified by the existence of legal, technical or commercial reasons.

(5) Each case involving the possible grant of a compulsory licence shall be considered on its individual merits.

(6) Compulsory licences shall not concern know-how related to the exploitation of the invention.

(7) Any compulsory licence shall be revoked when the circumstances which led to its granting cease to exist and are unlikely to recur, taking into account the legitimate interests of the right holder and of the licencee. The continued existence of these circumstances shall be reviewed upon request of the patent holder.

(8) All decisions concerning compulsory licences shall be subject to judicial review.

F. Lay-out designs of integrated circuits

Article 27

Contracting parties shall, subject to the following provisions, in their domestic law and practice comply with the substantive provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits of May 26 1989:

(1) (a) In contracting parties requiring registration as a condition for protection, topographies shall be protected for a term of no less than 10 years from the date of filing an application for registration or of the first commercial exploitation wherever in the world it occurs, which ever is the earlier, except that if neither of the above events occurs within 15 years of the first fixation or encoding there shall no longer be any obligation to provide protection.

(b) In contracting parties not requiring registration as a condition for protection, topographies shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs, except that if a topography is not so exploited within a period of 15 years of the first fixation or encoding, there shall no longer be any obligation to provide protection.

(2) The act of importing, selling or otherwise commercially distributing a product incorporating an infringing topography shall not itself be an infringement if the person performing the act in question did not know and had no reasonable grounds for believing that the product was infringing at the time he acquired it. However, for such acts committed after that person comes into knowledge or has reasonable grounds for belief that the product incorporates an infringing topography, he shall be liable to pay an equitable remuneration to the rightholder.

(3) Non-voluntary licences shall not be granted for purposes or on terms which could result in a distortion of international trade.

G. Acts contrary to honest commercial practices including protection of undisclosed information

Article 28

In the course of ensuring effective protection against unfair competition as provided for in Article 10bis of the Paris Convention -

(a) contracting parties shall provide in their domestic law and practice the legal means for natural and legal

persons to prevent information within their control from being disclosed to, acquired by or used by others without their consent in a manner contrary to honest commercial practices, insofar as the following conditions are satisfied :

(i) 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 or easily accessible;

(ii) actual or potential commercial value results from the secrecy; and

(iii) the person in possession of the information has taken reasonable steps to keep it secret.

(b) Contracting parties, when requiring the publication or submission of test or other data, the origination of which involves a considerable effort, shall protect such efforts against unfair exploitation by competitors. The protection shall last for a reasonable time commensurate with such efforts, the nature of the data required, the expenditure involved in their preparation and shall take account of the availability of other forms of protection.

PART 3: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Section 1: General Obligations

Article 1 Types of Procedures and Remedies

Contracting parties shall protect all intellectual property rights covered in this annex by means of civil law, criminal law or administrative law or a combination thereof. In conformity with the provisions below, they shall provide effective procedures, internally and at the border, to protect these intellectual property rights against any act of infringement, including effective remedies to stop or prevent infringements and which constitute an effective deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of obstacles to legitimate trade and provide for safeguards against their abuse.

Article 2 General Requirements

Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated, costly or time consuming, nor shall they be subject to unreasonable time-limits or unwarranted delays.

Article 3 Decisions

Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

Article 4 Judicial Review

Final administrative decisions on the merits of a case concerning the protection of an intellectual property right shall be subject to the right of appeal in a court of law.

Section 2: Civil and Administrative Procedures and Remedies

Article 5 Fair and Equitable Procedures

Contracting parties shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered by this Annex. 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 counsel, and procedures shall not impose overly burdensome requirements concerning personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present the evidence, including, for example, expert testimony and test data, relevant for the establishment of the facts and the determination of the validity and infringement of the intellectual property rights concerned, as well as to exercise their rights of defence. The procedure shall provide a means to identify and protect confidential information. Decisions shall only be based on such evidence in respect of which parties were offered the opportunity to be heard.

Article 6 Evidence of Proof

Where a party has presented a coherent case and has identified an item of evidence relevant to the substantiation of its claim and which lies in the control of the opposing party, the court may order that this evidence be produced by the opposing party, subject to conditions which ensure the protection of confidential information.

Article 7 Injunctions

The judicial authorities shall be authorised, upon request, and irrespective of whether the defendant has acted with intent or negligence, to issue an order that the infringement be refrained from or discontinued.

Article 8 Remedies other than Injunctions

Where an intellectual property right has been found to be infringed, the right holder can request that the infringing goods, as well as materials and implements predominantly used in their creation, be, without compensation of any sort, forfeited, and destroyed or disposed of outside the channels of commerce in such a manner as to minimise any harm caused to him. Such a request shall only be granted where such measures are not out of proportion to the importance of the infringement in question, for example, in cases of deliberate and flagrant infringements. The disposal of the infringing goods outside the channels of commerce shall not include their sale. Other than in exceptional cases the simple removal of the trade marks affixed without authorisation shall not be ordered.

Article 9 Damages

The right holder shall be entitled to obtain from the infringer adequate compensation of the injury he has suffered because of a deliberate or negligent infringement of his intellectual property right, and to recover the costs, including attorney fees, reasonably incurred in the proceedings. In appropriate cases recovery of profits may be granted even where the infringer has not acted intentionally or negligently.

Article 10 Right of Information

Unless this would be out of proportion to the importance of the infringement, the infringer may be ordered by a court to inform the right holder, of the identity of third persons involved in the production and distribution of the infringing goods or services, and their channels of distribution.

Article 11 Indemnification of the Defendant

Parties wrongfully enjoined or restrained by any measures taken for the
purpose of enforcing intellectual property rights shall be entitled to claim adequate compensation of the injury suffered because of an abuse of enforcement procedures and to recover the costs, including attorney fees, reasonably incurred in the proceedings. Contracting parties may provide for the possibility that these parties may in appropriate cases claim compensation from the authorities. They shall provide for such possibility in the case of administrative ex officio action.

Article 12 Administrative Procedures

When contracting parties provide for administrative procedures concerning the enforcement of intellectual property

rights, these procedures shall conform to principles equivalent to those applied to judicial procedures.

Section 3: Provisional Measures

Article 13

(a) Contracting parties shall provide for judicial procedures for the adoption, upon request by a right holder, of prompt and effective provisional measures

(i) to prevent an infringement of any intellectual property right from occurring or being continued, and in particular to prevent the goods from entering commercial channels, including their importation and exportation, and

(ii) to preserve the relevant evidence with regard to the alleged infringement.

Where appropriate, provisional measures may be adopted inaudita altera parte, 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.

(b) The applicant shall be required to provide any reasonably available evidence so as to permit the court to establish with a sufficient degree of certainty that he is the right holder and that his right is being infringed or that such infringement is imminent, and to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

(c) Where provisional measures have been adopted inaudita altera parte, the parties affected shall be given notice, at the latest immediately after the execution of the measures. A review, including an oral hearing, 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.

(d) Where provisional measures according to paragraph (a) (i) are to be carried out by customs authorities, the applicant may be required to supply any other information necessary for the identification of the goods concerned.

(e) Without prejudice to paragraph (c), provisional measures taken on the basis of paragraph (a) shall, upon request by the defendant, be revoked or otherwise cease to have effect, where proceedings leading to a decision on the merits of the case are not initiated within a reasonable period not exceeding one month after the notification of the provisional measures, unless determined otherwise by the court.

(f) 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 defendant shall be entitled to claim from the applicant adequate compensation of any injury caused by these measures.

(g) Contracting parties may provide for provisional administrative procedures. Article 12 shall apply accordingly.

Section 4: Special Requirements Related to Border Measures (3)

Article 14 Suspension of Release by Customs Authorities

Without prejudice to Article 20 below, contracting parties shall, in conformity with the provisions set out below, establish procedures according to which a right holder, who has valid grounds for suspecting

---

(3) For members of a customs union or of a free trade area, the term "border" is understood to apply to their border to countries or areas which are not part of the customs union or free trade area, and the term "territory" is understood as the customs territory of the union or area.

that the importation of goods which infringe an intellectual property right may take place may lodge an application in writing with the competent authorities for the suspension by the customs authorities of the release into free circulation of such goods.

Contracting parties may provide for corresponding procedures concerning the suspension by the customs authorities of the release of such goods destined for exportation from their territory.

Article 15 Application

The application under Article 14 must contain prima facie evidence of the alleged infringement and evidence that the applicant is the right holder. It must contain all pertinent information known or reasonably available to the applicant to enable the competent authority to act in knowledge of the facts to hand, and a sufficiently detailed description of the goods to make them readily recognisable by the customs authorities. It must specify the length of period for which the customsauthorities are requested to take action. The applicant may also be required to supply any other information necessary for the identification of the goods concerned. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and the period for which it will remain in force.

Article 16 Security or Equivalent Assurance

Contracting parties shall seek to avoid border enforcement procedures being abused by means of unjustified or frivolous applications. For this purpose they may require a right holder, who has lodged an application according to Article 14, to provide a security or equivalent assurance. Such securities or equivalent assurances shall not unreasonably deter recourse to these procedures.

Article 17 Duration of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 14 above. If, within two weeks after the applicant has been served with a notice of the notification of the suspension the customs authorities have not been informed that the matter has been referred to the authority competent to take a decision on the merits of the case, or that the duly empowered authority has taken provisional measures, the goods shall be released, provided that all other conditions for importation or exportation have been complied with. In exceptional cases, the above time-limit may be extended by another two weeks.

Article 18 Indemnification of the Importer and of the owner of the goods

The importer and the owner of the goods shall be entitled to claim from the applicant adequate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 17 above.

Article 19 Right of Information and Inspection

Without prejudice to the protection of confidential information, the competent authority shall be empowered to give the right holder sufficient opportunity to inspect any product detained by the customs authorities in order to substantiate his claims. Unless this would be contrary to provisions of domestic law, the customs authorities shall inform the right holder, upon request, of the names and addresses of the consignor, importer, consignee and of the quantity of the goods in question.

Article 20 Ex officio Action

Contracting parties may require customs authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired a sufficient degree of certainty that an intellectual property right is being infringed.

In this case, the customs authorities may at any time seek from the right holder any information that may assist them to exercise these powers.

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 customs authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out in Article 17 above.

With regard to the importer's rights to claim compensation, the provisions of Article 18 shall apply, mutatis mutandis.

Article 21 Remedies

Without prejudice to the other rights of action open to the right holder, and subject to the right of the defendant to lodge an appeal to the judicial authorities, the competent authorities shall provide for the forfeiture, destruction or disposal of the infringing goods in accordance with the principles set out in Article 8 above. Other than in exceptional circumstances the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure.

Article 22 De minimis Imports

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

Section 5: Criminal Procedures

Article 23

Contracting parties shall provide for criminal procedures and penalties to be applied in cases of wilful infringements of trademarks and copyright on a commercial scale. Such remedies shall include imprisonment and monetary fines sufficient to provide an effective deterrent and in appropriate cases the seizure, forfeiture and destruction of the infringing goods and of devices used in the commission of the offence. Contracting parties may provide for criminal procedures and penalties to be applied in cases of infringement of any other intellectual property right, in particular where it is committed wilfully and on a commercial scale.

PART 4: ACQUISITION OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES

Article 1

Where the acquisition of an intellectual property right covered by this Annex is subject to the intellectual property right being granted or registered, contracting parties shall provide for procedures which permit, subject to the substantive conditions for acquiring the intellectual property right being fulfilled, the granting or registration of the right within a reasonable period of time so as to avoid that the period of protection is unduly curtailed.

Article 2

Procedures concerning the acquisition or renewal of such intellectual property rights shall be governed by the general principles set out in Part 3, Section 1, Articles 2 and 3.

Article 3

Where the national law provides for opposition, revocation, cancellation or similar inter-partes procedures, they shall be expeditious, effective, fair and equitable.

Article 4

Final administrative decisions concerning the acquisition of an intellectual property right or any other matter subject to an inter-partes procedure referred to in Article 3 above, shall be subject to the right of appeal in a court of law or quasi-judicial body.

PART 5: SUPPLEMENTARY PROVISIONS

Article 1 Other Conventions

Contracting parties shall, within a period of [-] years, adhere to the Paris Convention for the Protection of Industrial Property as revised at Stockholm in 1967 and the Berne Convention for the Protection of Literary and Artistic Works as revised in Paris in 1971. They shall also give careful consideration to adhering to other international conventions on intellectual property with a view to strengthening the international framework for the protection of intellectual property rights and furthering the development of legitimate trade.

Article 2 Transparency

Laws, regulations, judicial decisions and administrative rulings of general application, pertaining to the availability, scope, acquisition and enforcement of intellectual property rights, shall be made available in such a manner as to enable governments and traders to become acquainted with them.

Contracting parties shall notify the laws and regulations referred to above to the Committee on Trade Related Intellectual Property Rights in order to assist the Committee in its review of the operation of this Annex. The Committee shall enter into consultations with the World Intellectual Property Organisation in order to agree, if possible, on the establishment of a common register containing these laws and regulations. If these consultations are successful, the Committee may decide to waive the obligation to notify such laws and regulations directly to the Committee.

A contracting party, having reason to believe that a specific judicial decision, administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Annex, may request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions and administrative rulings or bilateral agreement.

Article 3 Prior Consultation

Contracting parties shall make reasonable efforts within the framework of their constitutional systems to inform and, upon request, to consult with the other contracting parties on possible changes in their intellectual property right laws and regulations, and in the administration of such laws and regulations relevant to the operation of this Annex.

Article 4 Transitional Period

Contracting parties shall take all necessary steps to ensure the conformity of their laws, regulations and practice with the provisions of this Annex within a period of not more than [-] years following its entry into force. The Committee on Trade Related Intellectual Property Rights may decide, upon duly motivated request, that developing

countries which face special problems in the preparation and implementation of intellectual property laws, dispose of an additional period not exceeding [-] years, with the exception of Part 1, in respect of which this additional period shall not apply. Furthermore, the Committee may, upon duly motivated request, extend this additional period by a further period not exceeding [-] years in respect of least developed countries.

Article 5 Technical Assistance

Developed contracting parties shall, if requested, advise developing contracting parties on the preparation and implementation of domestic legislation on the protection and enforcement of intellectual property rights covered by this Annex as well as the prevention of their abuse, and shall grant them technical assistance on mutually agreed terms and conditions, regarding the establishment of domestic offices and agencies relevant to the implementation of their intellectual property legislation, including the training of officials employed in their respective governments.

Article 6 Committee on Trade Related Intellectual Property Rights

Contracting parties shall establish a Committee on Trade Related Intellectual Property Rights composed of representatives from each contracting party. The Committee shall elect its own chairman, establish its own rules of procedures and shall meet not less than once a year and otherwise upon request of any contracting party. The Committee shall monitor the operation of this Annex and, in particular, contracting parties' compliance with their obligations hereunder, and shall afford contracting parties the opportunity of consulting on matters relating to trade related intellectual property rights. It shall carry out such other responsibilities as assigned to it by the CONTRACTING PARTIES, and it shall, in particular, provide any assistance requested by them in the context of procedures under Articles XXII and XXIII of the General Agreement. In carrying out its functions, the Committee may consult with and seek information from any source they deem appropriate.

Article 7 Joint Expert Group

In order to promote cooperation between the Committee on Trade Related Intellectual Property Rights and bodies under the World Intellectual Property Organisation, the latter shall be invited by the Committee to serve together with the GATT Secretariat as Secretariat for a joint Expert Group which shall consist of representatives of the CONTRACTING PARTIES and of the Member States of the Paris and Berne Unions. The Expert Group shall, when requested to do so by the Committee, advise the Committee on technical matters under consideration.

Article 8 Dispute Settlement

Contracting parties agree that in the area of trade related intellectual property rights covered by this Annex they shall, in relation to each other, abide by the dispute settlement rules and procedures of the General Agreement, and the recommendations, rulings and decisions of the CONTRACTING PARTIES, and not have recourse in relation to other contracting parties to unilaterally decided economic measures of any kind. Furthermore, they undertake to modify and administer their domestic legislation and related procedures in a manner ensuring the conformity of all measures taken thereunder with the above commitment.

Article 9 International Cooperation

Contracting parties agree to co-operate 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 shall be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and co-operation between customs authorities with regard to trade in counterfeit goods.

Article 10 Review and Amendment

Contracting parties shall review the implementation of this Annex after the expiration of the transitional period

referred to in Article 4. They shall, having regard to the experience gained in its implementation, review it [-] years after that date, and at identical intervals thereafter. The contracting parties shall also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this annex.