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

STATUS OF WORK IN THE NEGOTIATING GROUP

Chairman's Report to the GNG

Annexed to this note is a draft text which is intended to provide a profile of the current state of work in the Negotiating Group and of the options for the possible results of the negotiations. The text is produced on the Chairman's responsibility in the hope that it will assist the further work of the Group and does not commit any participant. It is essentially a compilation of the options for legal commitments as they have emerged from a process of informal consultations. In this sense it is intended as a basis for further negotiation.

The two basic approaches to the negotiations on TRIPS are identified in the text by the letters A and B. These approaches differ not only in substance but also in structure. In broad terms approach A envisages a single TRIPS agreement, encompassing all the areas of negotiation and dealing with all seven categories of intellectual property on which proposals have been made; this agreement would be implemented as an integral part of the General Agreement. Approach B provides for two parts, one on trade in counterfeit and pirated goods (reflected in Part IX of the attached text) and the other on standards and principles concerning the availability, scope and use of intellectual property rights (reflected in Parts I-VIII). Under this approach, the latter part would cover the same categories of intellectual property as approach A, with the exception of the protection of trade secrets, which its proponents do not accept as a category of intellectual property; this part would be implemented in the "relevant international organisation, account being taken of the multidisciplinary and overall aspects of the issues involved". Options within an approach, A or B, are indicated by the use of square brackets or little "a"s, "b"s etc.

However, it must be emphasised that no point in this text is presented as having been agreed by all participants, even where it appears without an alternative. During the consultations participants said on many occasions that in their view particular provisions should be omitted as being undesirable or unnecessary, and I considered whether these provisions should be identified in the composite text as being subject to objection. I decided against doing so, however, on the ground that this would have carried the false implication that provisions not so identified had been agreed, and the stage has not yet been reached in the work where it would be appropriate to imply agreement. Furthermore, it may well be that in the effort to simplify the text points have been omitted to which participants attach importance. I would therefore emphasise that in no way should this text be construed as limiting the scope for participants to raise such points in the further negotiations.

I should like, in communicating this text, to express my appreciation for the very constructive approach of participants to the informal consultations I held. It is inevitable that in a document like this, which aims to be a rendering of the options for legal commitments and not a descriptive record of discussions, it is impossible to reflect adequately the full richness of the contributions made by participants, especially where those contributions took the form of explaining the difficulties in accepting some of the proposals made. I have no doubt that these points will continue to prove valuable in informing the further discussions and negotiations.

One of the issues which will have to be given further consideration in the autumn is the appropriateness of the technique of incorporating commitments by making reference to the provisions of existing international intellectual property conventions.

The Annex to this document reproduces those Parts of a composite draft text that I informally made available earlier to the Negotiating Group that concern preambular provisions and objectives, dispute prevention and settlement, transitional arrangements, institutional arrangements and final provisions. These Parts have not been the subject of detailed consultations, which have focused mainly on the proposals for substantive commitments. I have therefore decided to reproduce these sections of the earlier draft composite text tel quel in order to ensure that this document provides a complete picture of the state of work of the Negotiating Group. It should be noted that the notation used in the Annex is not identical to that in the body of this paper.

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Notes on the Composite Text

1. The numbering and lettering in the left column have been included to facilitate reference. Related points have been grouped with a common number. Alternative proposals on the same issue have been indicated in the left column by letters: A and B where these alternatives relate to the two broad approaches before the Group, and lower case letters where they relate to alternatives within an approach. Where a number appears without an A or a B, this either indicates a point of common approach or a point where the basic differences in the Group are not those between the A approach and the B approach (this is, for example, the situation for geographical indications, including appellations of origin). As emphasised in the covering note, the absence of an A or a B should not be taken to imply that no participants have difficulty with that point. The same applies with respect to the absence of alternatives signalled by lower case letters or square brackets within an A or a B approach.

2. "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property. "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works. "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted at Rome, 26 October 1961.

PART II: **GENERAL PROVISIONS AND BASIC PRINCIPLES**

1. **Scope and Coverage**

For the purposes of this agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections ... to ... of Part III. This definition is without prejudice to whether the protection given to that subject matter takes the form of an intellectual property right.

2. **Beneficiaries Eligible for Treatment Provided for in the Agreement**

2.1 Parties shall accord the treatment provided for in this agreement to the nationals of other PARTIES. [In respect of the relevant intellectual property right, the term "nationals" shall be understood as those natural or legal persons meeting the criteria for eligibility for protection under the Paris Convention (1967), the Berne Convention (1971), [the Rome Convention] and the Treaty on Intellectual Property in Respect of Integrated Circuits1.] [Any PARTY not a party to the Rome Convention and availing itself of the possibilities as provided for in Articles 5.3 or 6.2 of that Convention shall make the notification foreseen in that provision to (the committee administering this agreement).]

2.2A The term "right holder" means the right holder himself, any other natural or legal persons authorized by him [who are exclusive licensees of the right-holder], or [other authorized] persons, including federations and associations, having legal standing under domestic law to assert such rights.

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1The relevant provisions would appear to be Articles 2 and 3 of the Paris Convention, Articles 3 and 4 of the Berne Convention, Articles 4, 5 and 6 of the Rome Convention and Article 5(1) of the Treaty on Intellectual Property in Respect of Integrated Circuits.

3. **Freedom to Grant More Extensive Protection**

3A Unless expressly stated otherwise, nothing in Parts III-V of this agreement shall prevent PARTIES from granting more extensive protection to intellectual property rights than that provided in this agreement.

4. **Relation to Obligations under the GATT**

4A Nothing in this agreement shall derogate from existing obligations of PARTIES to each other under the GATT.

5. **Intellectual Property Conventions**

5A PARTIES shall comply with the [substantive] provisions [on economic rights] of the Paris Convention (1967), of the Berne Convention (1971) [and of the Rome Convention].

6. **National Treatment**

6.1 Each PARTY shall accord to the nationals of other PARTIES [treatment no less favourable than] [the same treatment as] that accorded to the PARTY's nationals with regard to the protection of intellectual property, [subject to the exceptions already provided in, respectively,] [without prejudice to the rights and obligations specifically provided in] the Paris Convention [(1967)], the Berne Convention [(1971)], [the Rome Convention] and the Treaty on Intellectual Property in Respect of Integrated Circuits2. [Any PARTY not a party to the Rome Convention and availing itself of the possibilities as provided in Article 16(1)(a)(iii) or (iv) or Article 16(1)(b) of that Convention shall make the notification foreseen in that provision to (the committee administering this agreement).]

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2For the first two and the last of these conventions, the exceptions have been listed by WIPO in document NG11/W/66. For the Rome Convention, the relevant provisions would appear to be Articles 15, 16(1)(a)(iii) and (iv) and (b), and 17.

6.2A Any exceptions invoked in respect of procedural requirements imposed on beneficiaries of national treatment, including the designation of an address for service or the appointment of an agent within the jurisdiction of a PARTY, shall not have the effect of impairing access to, and equality of opportunity on, the market of such

PARTY and shall be limited to what is necessary to secure reasonably efficient administration and security of the law.

6.3A Where the acquisition of an intellectual property right covered by this agreement is subject to the intellectual property right being granted or registered, PARTIES shall provide granting or registration procedures not constituting any de jure or de facto discrimination in respect of laws, regulations and requirements between nationals of the PARTIES.

6.4A With respect to the protection of intellectual property, PARTIES shall comply with the provisions of Article III of the General Agreement on Tariffs and Trade, subject to the exceptions provided in that Agreement.3

7. **Most-Favoured-Nation Treatment/Non-Discrimination**

7.1aA PARTIES shall ensure that the protection of intellectual property is not carried out in a manner [which would constitute an arbitrary or unjustifiable discrimination between nationals of a PARTY and those of any other country or which would constitute a disguised restriction on international trade] [that has the effect of impairing access to and equality of opportunity on their markets].

3This provision would not be necessary if, as proposed by some participants, the results of the negotiations were to be an integral part of the General Agreement on Tariffs and Trade.

7.1b.1 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] [PARTY] shall be accorded [immediately and unconditionally] to the nationals of all other PARTIES.

7.1b.2 Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a PARTY:

- 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.

- Concerning procedures provided under international agreements relating to the acquisition and maintenance of protection for intellectual property in several countries, provided that accession to such agreements is open to all PARTIES.

- Granted in accordance with the provisions of the Berne Convention (1971) [and the Rome Convention] authorising that the treatment accorded be a function not of national treatment but of the treatment accorded in another country.4

- Deriving from international agreements related to intellectual property law which entered into force prior to the entry into force of this agreement, provided that such agreements do not constitute an arbitrary and unjustifiable discrimination against nationals of other PARTIES and provided that any such exception in respect of another PARTY does not remain in force for longer than [X] years after the coming into force of this agreement between the two PARTIES in question.

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4The relevant provisions would appear to be Articles 2(7), 6(1), 7(8), 14ter(1) and (2), 18 and 30(2)(b) of the Berne Convention and Articles 15 and 16(1)(a)(iv) and (b) of the Rome Convention.

- Exceeding the requirements of this agreement and which is provided in an international agreement to which the PARTY belongs, provided that [such agreement is open for accession by all PARTIES to this agreement] [any such PARTY shall be ready to extend such advantage, favour, privilege or immunity, on terms equivalent to those under the agreement, to any other PARTY so requesting and to enter into good faith negotiations to this end.]

7.2A With respect to the protection of intellectual property, PARTIES shall comply with the provisions of Article I of the General Agreement on Tariffs and Trade, subject to the exceptions provided in that Agreement.5

8. **Principles**

8B.1 PARTIES recognize that intellectual property rights are granted not only in acknowledgement of the contributions of inventors and creators, but also to assist in the diffusion of technological knowledge and its dissemination to those who could benefit from it in a manner conducive to social and economic welfare and

agree that this balance of rights and obligations inherent in all systems of intellectual property rights should be observed.

8B.2 In formulating or amending their national laws and regulations on IPRs, PARTIES have the right to adopt appropriate measures to protect public morality, national security, public health and nutrition, or to promote public interest in sectors of vital importance to their socio-economic and technological development.

5This provision would not be necessary if, as proposed by some participants, the results of the negotiations were to be an integral part of the General Agreement on Tariffs and Trade.

8B.3 PARTIES agree that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and enhance the international transfer of technology to the mutual advantage of producers and users of technological knowledge.

8B.4 Each PARTY will take the measures it deems appropriate with a view to preventing the abuse of intellectual property rights or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology. PARTIES undertake to consult each other and to co-operate in this regard.

PART III: STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

1. Relation to Berne Convention

1A PARTIES shall grant to authors and their successors in title the [economic] rights provided in the Berne Convention (1971), subject to the provisions set forth below.

1B PARTIES shall provide to the nationals of other PARTIES the rights which their respective laws do now or may hereafter grant, consistently with the rights specially granted by the Berne Convention.

2. Protectable Subject Matter

2.1 PARTIES shall provide protection to computer programs [,as literary works for the purposes of point 1 above,] [and to databases]. Such protection shall not extend to ideas, procedures, methods [, algorithms] or systems.

2.2B.1 For the purpose of protecting computer programs, PARTIES shall determine in their national legislation the nature, scope and term of protection to be granted to such works.

2.2B.2 In view of the complex legal and technical issues raised by the protection of computer programs, PARTIES undertake to cooperate with each other to identify a suitable method of protection and to evolve international rules governing such protection.

3. **Rights Conferred**

(Right of Importation and Distribution)

3A.1 Economic rights shall include:

3A.1.1 the right to import or authorize the importation into the territory of the PARTY of lawfully made copies of the work as well as the right to prevent the importation into the territory of the PARTY of copies of the work made without the authorization of the right-holder;

3A.1.2 the right to make the first public distribution of the original or each authorized copy of a work by sale, rental, or otherwise except that the first sale of the original or such copy of, at a minimum, a computer program shall not exhaust the rental or importation right therein.1

(Rental Rights)

3A.2.1 [At least in the case of computer programs [,cinematographic works] [and musical works,]] PARTIES shall provide authors and their successors in title the [right to authorise or prohibit the rental of the originals or copies of their copyright works] [or, alternatively,] [the right to obtain an equitable remuneration] [corresponding to the economic value of such a use] [whenever originals or copies are rented or otherwise made available against payment]. [It is understood that granting to authors the right to authorise or prohibit the rental of their works for a certain period of time and to claim an equitable remuneration for the remaining period is sufficient to fulfil this provision.]

3A.2.2 For the purposes of the previous point, rental shall mean the disposal [for a limited period of time] of the possession of the original or copies for [direct profit-making purposes][direct or indirect commercial advantage].

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1It is understood that, unless expressly provided to the contrary in this agreement, nothing in this agreement shall limit the freedom of PARTIES to provide that any intellectual property rights conferred in respect of the use, sale, importation and other distribution of goods are exhausted once those goods have been put on the market by or with the consent of the right holder.

3A.2.3 There shall be no obligation to provide for a rental right in respect of works of applied art or architecture.

4. **Protection in Respect of Private Copying**

4A Protected works shall enjoy the same protection in respect of private or personal copying accorded under the domestic law of a PARTY to works of national origin.

5. **Definition of "Public Communication"**

5A With respect to the right to make a public communication of a work (e.g. to perform, display, project, exhibit, broadcast, transmit, or retransmit a work), public communication shall include:

5A.1 communicating a work in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

5A.2 communicating or transmitting a work, a performance, or a display of a work, in any form, or by means of any device or process to a place specified in point 5A.1 or to the public, regardless of whether the members of the public capable of receiving such communications can receive them in the same place or separate places and at the same time or at different times.

6. **Transfers of Rights**

6A Protected rights shall be freely and separately exploitable and transferable. [Assignees and exclusive licensees shall enjoy all rights of their assignors and licensors acquired through voluntary agreements, and shall be entitled to enjoy, exercise and enforce their acquired exclusive rights [in their own names.]]

7. **Term of Protection**

7A.1 The term of protection of a work whose author is a legal entity shall be no less than 50 years from the end of the year of authorised publication, or, failing such authorised publication within 50 years from the making of the work, 50 years from the end of the year of making.

7A.2 The term of protection of computer programs shall be no less than 50 years after the end of the year of creation.

8. **Limitations, Exemptions and Compulsory Licensing**

8A.1 In respect of the rights provided for at point 3, the limitations and exemptions, including compulsory licensing, recognised under the Berne Convention (1971) shall also apply mutatis mutandis. [Limitations made to the rights in favour of private use shall not apply to computer software.] [PARTIES may also provide for other limited exceptions to rights in respect of computer programs, consistent with the special nature of these works.]

8A.2 PARTIES shall confine any limitations or exemptions to exclusive rights (including any limitations or exceptions that restrict such rights to "public" activity) to clearly and carefully defined special cases which do not impair an actual or potential market for or the value of a protected work.

8A.3 Translation and reproduction licensing systems permitted in the Appendix to the Berne Convention (1971):

8A.3.1 shall not be established where legitimate local needs are being met by voluntary actions of copyright owners or could be met by such action but for intervening factors outside the copyright owner's control; and

8A.3.2 shall provide an effective opportunity for the copyright owner to be heard prior to the grant of any such licences.

8A.4 Any compulsory licence (or any restriction of exclusive rights to a right of remuneration) shall provide mechanisms to ensure prompt payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

8B (See Sections 8 and 9 below.)

9. **Protection of Works Existing at Time of Entry into Force**

9A A PARTY shall provide protection, consistent with this agreement, for all works not yet in the public domain in its territory at the time of entry into force of this agreement. In addition, a PARTY that has afforded no effective copyright protection to works or any class of works of other PARTIES prior to its entry into force in its territory shall provide protection, consistent with this agreement, for all works of other PARTIES that are not in the public domain in their country of origin at the time of entry into force of this agreement in its territory.

10. **Relation to Rome Convention**

10A PARTIES shall, as minimum substantive standards for the protection of performers, broadcasting organisations and producers of phonograms, provide protection consistent with the substantive provisions of the Rome Convention. [Articles 1 to 20 of the Rome Convention could be considered to constitute the substantive provisions.]

11. **Rights of Producers of Phonograms (Sound Recordings)**

11A.1 PARTIES shall extend to producers of phonograms the right to authorise or prohibit the direct or indirect reproduction of their phonograms [by any means or process, in whole or in part].

11A.2a [In regard to the rental of phonograms,] the provisions of point 3 in respect of computer programs shall apply mutatis mutandis in respect of producers of phonograms [or performers or both].

11A.2b The protection provided to producers of phonograms shall include the right to prevent all third parties not having their consent from putting on the market, from selling, or from otherwise distributing copies of such phonograms.

11A.3 The provisions of point 4A shall apply mutatis mutandis to the producers of phonograms.

12. **Rights of Performers**

12A The protection provided for performers shall include the possibility of preventing:

12A.1 the broadcasting [by any technical means or process such as by radio wave, by cable or by other devices] [by wireless means and the communication to the public of their live performance];

12A.2 the fixation of their unfixed performance [on phonograms or data carriers and from reproducing such fixations];

12A.3 the reproduction of a fixation of their performance;

12A.4 the production of their performance in any place other than that of the performance;

12A.5 the offering to the public, selling, or otherwise distributing copies of the fixation containing the performance.

13. **Rights of Broadcasting Organisations**

13.1 Broadcasting organisations shall have the possibility of preventing:

13A.1 the fixation of their broadcasts [on phonograms or data carriers, and from reproducing such fixations];

13A.2 the reproduction of fixations;

13A.3 the communication to the public of their [television] broadcasts;

13A.4 the rebroadcasting by wireless means of their broadcasts;

13A.5 the retransmitting of their broadcast;

13A.6 the putting on the market, sale, or other distribution of copies of the broadcast.

14. **Public Communication of Phonograms**

14A If a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used directly for broadcasting or for any commu-nication 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.

15. **Term of Protection**

15A.1a The term of protection granted to producers of phonograms, performers and broadcasting organisations shall last at least until the end of a period of [20][50] years computed from the end of the year in which the fixation was made or the performance or broadcast took place.

15A.2a 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.

15Ab Point 7 shall apply mutatis mutandis to the producers of phonograms.

16. **Exceptions**

16Aa PARTIES may, in relation to the rights conferred by points 11, 12, 13 and 14, provide for limitations, exceptions and reservations to the extent permitted by the Rome Convention.

16Ab Points 8A.2-4 of this Part shall apply mutatis mutandis to phonograms.

16B (See Section 8 of this Part.)

17. **Acquisition of Rights**

17A.1 The provisions of points 6 and 9 of this Part shall apply mutatis mutandis to the producers of phonograms.

17A.2 PARTIES shall protect phonograms first fixed or published in the territory of another PARTY, including phonograms published in the territory of a PARTY within thirty days of their publication elsewhere; and phonograms the producer of which is a national of a PARTY, or is a company headquartered in the territory of a PARTY.

17A.3 The acquisition and validity of intellectual property rights in phonograms shall not be subject to any formalities, and protection shall arise automatically upon their creation.

SECTION 2: TRADEMARKS

1. **Protectable Subject Matter**

1A.1 A trademark is a sign capable of distinguishing goods or services of one undertaking from those of other undertakings. It may in particular consist of words and personal names, letters, numerals, the shape of goods and of their packaging, combinations of colours, other graphical representations, or any combination of such signs.

1A.2 Trademarks which are:

(i) devoid of any distinctive character;

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

(iii) in conflict with earlier rights,

[shall not be protected] [cannot be validly registered]. Protection may also be denied in particular to trademarks contrary to morality or public order.

1A.3 The term "trademark" shall include service marks, as well as collective [and] [or] certification marks.

1B PARTIES shall provide protection for trademarks and service marks registered in their territories in compliance with the formalities and requirements laid down in their respective national legislation.

2. **Acquisition of the Right and Procedures**

2A.1 PARTIES shall enable the right to a trademark to be acquired by registration or by use. For the acquisition of the right to a trademark by use, a PARTY may require that the trademark is well-known among consumers or traders of the PARTY.

2A.2 A system for the registration of trademarks shall be provided. 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.

2A.3 [[Actual] use of a trademark prior to [the application for] registration shall not be a condition for registration.] [Use of a trademark may be required as a prerequisite for registration.]

2A.4 PARTIES are encouraged to participate in a system for the international registration of trademarks.

2A.5 PARTIES shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In addition, PARTIES may afford an opportunity for other parties to oppose the registration of a trademark.

2B Parties shall provide protection for trademarks and service marks registered in their territories in compliance with the formalities and requirements incorporated or laid down in their respective national law.

3. **Rights Conferred**

3.1 [The owner of a registered trademark shall have exclusive rights therein.] The owner of a registered trademark [or service mark] 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 registration has been granted [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 be presumed.]

3.2A 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 right to the trademark has been acquired, 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.

3.3A PARTIES shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known [in that country]. [This protection shall be extended inter alia against the use of such marks for goods or services which are dissimilar to original goods or services.] [In determining whether a trademark is well-known, the extent of the trademark's use and promotion in international trade must be taken into consideration. A PARTY may not require that the reputation extend beyond the sector of the public which normally deals with the relevant products or services.]

3.4A The owner of a trademark shall be entitled to take action against any unauthorised use which constitutes an act of unfair competition.

4. **Exceptions**

4A 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.

4B Rights shall be subject to exhaustion if the trademarked goods or services are marketed by or with the consent of the owner in the territories of the PARTIES.

5. **Term of Protection**

5A Initial registration of a trademark shall be for a term of no less than ten years. The registration of a trademark shall be renewable indefinitely.

5B It shall be a matter for national legislation to determine the duration of the protection granted.

6. **Requirement of Use**

6.1 If use of a registered trademark is required to maintain the right to a trademark, the registration may be cancelled only after [an uninterrupted period of at least [five years] [three years]] [a reasonable period] of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner.

6.2A Use of the trademark by another person with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

6.3A Valid reasons for non-use shall include non-use due to circumstances arising independently of the will of the proprietor of a trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other governmental requirements for products protected by the trademark.

7. **Other Requirements**

7A The use of a trademark in commerce shall not be [unjustifiably] encumbered by special requirements, such as use with another trademark,
a use requirement which reduces the function of the trademark as an indication of source, [or use in a special form].

7B It shall be a matter for national legislation to determine the conditions for the use of a mark.

8. **Licensing and Compulsory Licensing**

8A Compulsory licensing of trademarks shall not be permitted.

8B It will be a matter for national legislation to determine the conditions for the use of a mark. (See also Section 8 below)

9. **Assignment**

9A The right to a [registered] trademark may be assigned with or without the transfer of the undertaking to which the trademark belongs. [PARTIES may require that the goodwill to which the trademark belongs be

transferred with the right to the trademark.] [PARTIES may prohibit the assignment of a registered trademark which is identical with, or similar to, a famous mark indicating a state or a local public entity or an agency thereof or a non-profit organisation or enterprise working in the public interest.]

9B It will be a matter for national legislation to determine the conditions for the use or assignment of a mark. (See also Section 8 below)

SECTION 3: GEOGRAPHICAL INDICATIONS

1. Definition

1.1 Geographical indications are any designation, expression or sign which [aims at indicating] [directly or indirectly indicates] that a product [or service] originates from a country, region or locality.

1.2 [Geographical indications] [Appellations of origin] are for the purpose of this agreement [geographical] indications which designate a product as originating from the territory of a PARTY, a region or locality in that territory where a given quality, reputation or other characteristic of the products is attributable [exclusively or essentially] to its geographical origin, including natural [and] [or] human factors. [A denomination which has acquired a geographical character in relation to a product which has such qualities, reputation or characteristics is also deemed to be an appellation of origin.]

1.3 PARTIES agree that the provisions at point 2b.1 and 2b.2 below shall also 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 the territory of another PARTY.

2. Protection

2a PARTIES shall provide protection for geographical indications by complying with the provisions under the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891, as last revised in 1967.

2b.1 PARTIES shall protect [, at the request of an interested party,] geographical [or other] indications [denominating or suggesting the territory of a PARTY, a region or a locality in that territory] against use with respect to products not originating in that territory if that use [constitutes an act of unfair competition in the sense of Article 10bis of the Paris Convention (1967), including use which] [might mislead] [misleads] the public as to the true origin of the product.

[Such protection shall notably be afforded against:

- any direct or indirect use in trade in respect of products not originating 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 products likely to suggest a link between those products and any geographical area other than the true place of origin.]

2b.2 PARTIES shall [, at the request of an interested party,] refuse or invalidate the registration of a trademark which contains or consists of:

[an indication denominating or suggesting a geographical indication,]

[a geographical or other indication denominating or suggesting the territory of a PARTY, or a region or locality in that territory,]

with respect to products not originating in the territory indicated [, if use of such indication [for such products] is of such a nature as to mislead or confuse the public [as to the true place of origin]]. [National laws shall provide the possibility for interested parties to oppose the use of such a trademark.]

2b.3 Appropriate measures shall be provided by PARTIES to enable interested parties to impede a geographical indication [, generally known in the territory of the PARTY to consumers of given products or of similar products as designating the origin of such products manufactured or produced in the territory of another PARTY,] from developing, as a result of its use in trade for [identical or similar] products of a different origin, into a designation of generic character [for these products or for similar products] [, it being understood that appellations of origin for products of the vine shall not be susceptible to develop into generic designations].

2c.1 PARTIES shall protect geographical indications that certify regional origin by providing for their registration as certification or collective marks.

2c.2 PARTIES shall provide protection for non-generic appellations of origin for wine by prohibiting their use when such use would mislead the public as to the true geographic origin of the wine. To aid in providing this protection, PARTIES are encouraged to submit to other PARTIES evidence to show that each such appellation of origin is a country, state, province, territory, or similar political subdivision of a country equivalent to a state or country; or a viticultural area.

2d PARTIES undertake to provide protection for geographical indications including appellations of origin against any use which is likely to confuse or mislead the public as to the true origin of the product.

3. **International Register**

PARTIES agree to cooperate with a view to establishing an international register for protected geographical indications, in order to facilitate the protection of geographical indications including appellations of origin. In appropriate cases the use of documents certifying the right to use the relevant geographical indication should be provided for.

4. **Exceptions**

4.1 No PARTY shall be required to apply the provisions for the protection of geographical indications:

(a) to the prejudice of holders of rights relating to an indication identical with or similar to a geographical indication or name and used or filed in good faith before the date of the entry into force of this agreement in the PARTY;

(b) with regard to goods for which the geographical indication or name is in the common language the common name of goods in the territory of that PARTY, or is identical with a term customary in common language.

4.2a PARTIES agree that the preceding paragraphs shall not prevent the conclusion pursuant to Article 19 of the Paris Convention (1967) of bilateral or multilateral agreements concerning the rights under those paragraphs, with a view to increasing the protection for specific geographical or other indications, and further agree that any advantage, favour, privilege or immunity deriving from such agreements are exempted from the obligations under point 7 of Part II of this agreement.

4.2b Given the country specific nature of [geographical indications] [appellations of origin], it is understood that in connection with any advantage, favour, privilege or immunity stemming from bilateral agreements on such [indications] [appellations] and exceeding the requirements of this agreement, the most-favoured nation treatment obligations under point 7 of Part II of this agreement shall be understood to require each PARTY belonging to such an agreement to be ready to extend such advantage, favour, privilege or immunity, on terms equivalent to those under the agreement, to any other PARTY so requesting and to enter into good faith negotiations to this end.

SECTION 4: INDUSTRIAL DESIGNS

1. Requirements for Protection

1.1 PARTIES shall provide for protection for industrial designs which are new [and] [or] original [, ornamental and non-obvious].

1.2 PARTIES [may] [shall] condition such protection on registration [or other formality].

1.3 PARTIES may provide that protection shall not extend to features required by technical reasons.

1.4 Such protection shall be provided without affecting any protection under copyright law [or other law].

2. Textiles Designs

2A The acquisition of industrial design rights in textiles or clothing shall not be encumbered by any special requirements such as ex officio examination of novelty before registration, compulsory publication of the design itself or disproportionate fees for multiple users of the registration.

3. Industrial Design Rights

3. The owner of a [protected] [registered] industrial design shall have the right to prevent third parties not having his consent from:

manufacturing;
[selling] [offering, putting on the market];
using;
or importing for commercial purposes;

[an object which is the subject matter of the industrial design right] [their industrial designs] [articles the appearance of which does not differ substantially from that of the protected design] [articles bearing a design which is a copy or substantially a copy of the protected design].

4. Obligations of Industrial Design Owners

4B With respect to the obligations of an industrial design owner, the requirements for patent inventions under point 3 of Section 5 below shall apply.

5. Term of Protection and Renewal

5A.1 The term of protection available shall be at least ten years.

5A.2 PARTIES shall provide for an initial term of protection of registered industrial designs of at least five years [from the date of application], with a possibility of renewal for [at least another period] [two consecutive periods] of five years.

5B The term of protection shall be provided under national legislation.

6. **Remedial Measures under National Legislations; Compulsory Licensing of Industrial Designs**

6A.1 [PARTIES shall not issue compulsory licences for industrial designs except to remedy adjudicated violations of competition law to which the conditions set out at point 3 of Section 5 below shall apply mutatis mutandis.] [The compulsory licensing of an industrial design shall not be permitted.]

6A.2 The protection of industrial designs shall not be subject to any forfeiture by reason of failure to exploit.

6B (See Section 8 below)

SECTION 5: **PATENTS**

1. **Patentable Subject Matter**

1.1 Patents shall be [available] [granted] for [any inventions, whether products or processes, in all fields of technology,] [all products and processes] which are new, which are unobvious or involve an inventive step and which are useful or industrially applicable.

1.2 Patents shall be available according to the first-to-file principle.

1.3 Requirements such as filing of an adequate disclosure in a patent application and payment of reasonable fees shall not be considered inconsistent with the obligation to provide patent protection.
(See also point 3.1 below)

1.4 The following [shall] [may] be excluded from patentability:

1.4.1 Inventions, [the publication or use of which would be], contrary to public order, [law,] [generally accepted standards of] morality, [public health,] [or the basic principle of human dignity] [or human values].

1.4.2 Scientific theories, mathematical methods, discoveries and materials or substances [already existing] [in the same form found] in nature.

1.4.3 Methods of [medical] treatment for humans [or animals].

1.4.4 [Any] plant or animal [including micro-organisms] [varieties] or [essentially biological] processes for the production of plants or animals; [this does not apply to microbiological processes or the products thereof]. [As regards biotechnological inventions, further limitations should be allowed under national law].

1.4.5 [Production, application and use of] nuclear and fissionable material, [and substances manufactured through nuclear transformation].

1.5B PARTIES may exclude from patentability certain kinds of products, or processes for the manufacture of those products on grounds of public interest, national security, public health or nutrition.

1.6A PARTIES shall provide for the protection of plant varieties by patents and/or by an effective sui generis system.

2. **Rights Conferred**

2.1A A patent shall confer on its owner at least the following exclusive rights:

(a) to prevent third parties not having his consent from the acts of: making, using, [putting on the market, offering] [or selling] [or importing] [or importing or stocking for these purposes] the product which is the subject matter of the patent.

(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, [putting on the market, offering] [selling,] [or importing,] [or importing or stocking for these purposes,] at least the product obtained directly by that process.

2.1B Once a patent has been granted, the owner of the patent shall have the following rights:

(a) The right to prevent others from making, using or selling the patented product or using the patented process for commercial or industrial purposes.

(b) The right to assign, or transfer by succession, the patent and to conclude licence contracts.

(c) The right to a reasonable remuneration when the competent authorities of a PARTY to the present agreement use a patent for government purpose or provide for the granting of a licence of right or a compulsory licence. Such reasonable remuneration will be determined having regard to the economic situation of the PARTY, the nature of the invention, the cost involved in developing the patent and other relevant factors.
(See also point 5A.3.9 below)

2.2 **Exceptions to Rights Conferred**

2.2 [Provided that legitimate interests of the proprietor of the patent and of third parties are taken into account,] limited exceptions to the exclusive rights conferred by a patent may be made for certain acts, such as:

2.2.1 Rights based on prior use.

2.2.2 Acts done privately and for non-commercial purposes.

2.2.3 Acts done for experimental purposes.

2.2.4 Preparation in a pharmacy in individual cases of a medicine in accordance with a prescription, or acts carried out with a medicine so prepared.

2.2.5A Acts done in reliance upon them not being prohibited by a valid claim present in a patent as initially granted, but subsequently becoming prohibited by a valid claim of that patent changed in accordance with procedures for effecting changes to patents after grant.

2.2.6B Acts done by government for purposes merely of its own use.

2.3 **Reversal of Burden of Proof**

2.3A.1 If the subject matter of a patent is a process for obtaining a 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 [at least one of] the following situation[s]:

(a) if the product is new, [or,

(b) where the product is not new, if there is a substantial likelihood that the product was made by the process [and the owner of the patent has been unable through reasonable efforts to determine the process actually used].

2.3A.2 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.

2.3B Where the subject matter of a patent is a process for obtaining a product, whether new or old, the burden of establishing that an alleged infringing product was made by the patented process shall always be on the person alleging such infringement.

3. **Obligations of Patent Owners**

The owner of the patent shall have the following obligations:

3.1 to disclose prior to grant the invention in a clear and complete manner to permit a person versed in the technical field to put the invention into practice [and in particular to indicate the best mode for carrying out the invention];
(See also point 1.3 above)

3.2 to give information concerning corresponding foreign applications and grants;

3.3B to work the patented invention in the territory of the Party granting it within the time limits fixed by national legislation;

3.4B in respect of licence contracts and contracts assigning patents, to refrain from engaging in abusive or anticompetitive practices adversely affecting the transfer of technology, subject to the sanctions provided for in Sections 8 and 9 below.

4. **Term of Protection**

4A.1 The term of protection shall be [at least] [15 years from the date of filing of the application, except for inventions in the field of pharmaceuticals for which the term shall be 20 years] [20 years from the date of filing of the application] [or where other applications are invoked in the said application, 20 years from the filing date of the earliest filed of the invoked applications which is not the priority date of the said application].

4A.2 PARTIES are encouraged to extend the term of patent protection in appropriate cases, to compensate for delays regarding the exploitation of the patented invention caused by regulatory approval processes.

4B It shall be a matter for national legislation to determine the duration of protection.

5. **Compulsory Licences/Licences of Right/Use for Government Purposes**

5A.1 The term "compulsory licence" shall be understood to cover licences of right [and government use without the authorisation of the patent owner]. PARTIES shall minimise the grant of compulsory licences in order not to impede adequate protection of patent rights.

5A.2 A compulsory licence may [only] be granted for the following purposes:

5A.2.1 To remedy an adjudicated violation of competition laws.

5A.2.2a To address, only during its existence, a [declared] national emergency.

5A.2.2b On the grounds of the public interest concerning national security, or critical peril to life of the general public or body thereof.

5A.2.2c Where the exploitation of the patented invention is required by reason of an overriding public interest, the possibility of exploitation of the patented invention by the government, or by third persons authorized by it.

5A.2.3 Where the invention claimed in a later patent cannot be exploited without infringing an earlier patent, a compulsory licence may be given to the extent necessary to avoid infringement of the patent, provided that the invention claimed in the later patent involves an important technical advance in relation to the invention claimed in the earlier patent or serves an entirely different purpose.

5A.2.4 In the event [of failure to exploit the patented invention or that its exploitation] [that the acts of manufacturing, selling or importing of the patented product or using of the patented process and the performance of any of these acts regarding the product obtained by the process] does not satisfy the [basic] needs of the local market before the expiration of a period of four years from the date of the patent application, or three years from the date of the grant of the patent, whichever period expires last, [unless legitimate reasons as viewed from Government's regulation or normal commercial practices exist].

5A.3 Where the law of a PARTY allows for the grant of compulsory licences, [such licences shall be granted in a manner which minimises distortions of trade[. To this end] [and]] the following provisions shall be respected:

5A.3.1 A compulsory licence may only be granted after unsuccessful efforts have been made by the applicant to negotiate a voluntary licence in line with normal commercial practices with the right holder, [except in the case of a manifest national emergency].

5A.3.2 Compulsory licences for non-working or insufficiency of working on the territory of the granting authority shall not be granted 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.

5A.3.3 The scope of a compulsory licence shall be limited to the precise extent necessary for the purpose for which it was granted.

5A.3.4 Compulsory licences shall be non-exclusive [and non-assignable except with that part of the enterprise or goodwill which exploits such licence].

5A.3.5 Compulsory licences shall be granted to permit manufacture for the local market only.

5A.3.6 Each case involving the possible grant of a compulsory licence shall be considered on its individual merits.

5A.3.7 Compulsory licences shall not require the transfer of know-how related to the exploitation of the invention.

5A.3.8 Any compulsory licence shall be revoked when the circumstances which led to its granting cease to exist and are unlikely to recur, subject to adequate protection of the legitimate interests of the right holder and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the right holder.

5A.3.9 The payment of [an equitable remuneration to the right holder corresponding to the economic value of the licence] [remuneration to the right holder adequate to compensate the right holder fully for the licence] [reasonable compensation to the patentee] shall be required [, except for compulsory licences to remedy adjudicated violations of competition law].
(See also point 2.1B(c))

5A.3.10 Any decision relating to the grant and continuation of compulsory licences and the compensation provided therefor shall be subject to [judicial review] [review by a distinct higher authority].

5B Nothing in this Agreement shall be construed to prevent any PARTY from taking any action necessary: (i) for the working or use of a patent for governmental purposes; or (ii) where a patent has been granted for an invention capable of being used for the preparation or production of food or medicine, for granting to any person applying for the same a licence limited to the use of the invention for the purposes of the preparation or production and distribution of food and medicines.

(See also point 2.1B(c) above and Section 8 below)

6. **Revocation/Forfeiture**

6A.1 A patent [[may not be revoked or forfeited [merely] on grounds [of non-working] stipulated in 5A.2 above]] [may only be revoked on grounds that it fails to meet the requirements of 1.1 and 1.3 above].

6A.2 Judicial review shall be available in the case of forfeiture of a patent where applicable.

6B A patent may be revoked on grounds of public interest and where the conditions for the grant of compulsory licences are not fulfilled.

7. **Transitional Protection**

7A.1 PARTIES shall provide transitional protection for products embodying subject matter deemed to be unpatentable under its patent law prior to its acceptance of this Agreement, where the following conditions are satisfied:

(a) the subject matter to which the product relates will become patentable after acceptance of this Agreement;

(b) a patent has been issued for the product by another PARTY prior to the entry into force of this Agreement; and

(c) the product has not been marketed in the territory of the PARTY providing such transitional protection.

7A.2 The owner of a patent for a product satisfying the conditions set forth above shall have the right to submit a copy of the patent to the PARTY providing transitional protection. Such PARTY shall limit the right to make, use, or sell the product in its territory to such owner for a term to expire with that of the patent submitted.

8. **Formalities**

8B It shall be a matter for national legislation to determine the formalities required for the granting of patents.

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

1. **Relation to Washington Treaty**

1. PARTIES agree to provide protection to the layout-designs (topographies) of integrated circuits in accordance with the [substantive] provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits as open for signature on 26 May 1989 [, subject to the following provisions].

2. **Legal Form of Protection**

2A The protection accorded under this agreement shall not prevent protection under other laws.

3. **Scope of the Protection**

3A Any PARTY shall consider unlawful the following acts if performed without the authorisation of the holder of the right:

3A.1 incorporating the layout-design (topography) in an integrated circuit;

3A.2 importing, selling, or otherwise distributing for commercial purposes a protected layout-design (topography), an integrated circuit in which a protected layout-design (topography) is incorporated or a product incorporating such an integrated circuit.

4. **Acts not Requiring the Authorization of the Holder of the Right**

4A.1 PARTIES may exempt from liability under their law the reproduction of a layout-design (topography) for purposes of teaching, analysis, or evaluation in the course of preparation of a layout-design (topography) that is itself original. This provision shall replace Articles (2)(a) and (b) of the Washington Treaty.

4A.2 The act of importing, selling, or otherwise distributing for commercial purposes [an unlawfully reproduced layout-design (topography),] [an integrated circuit incorporating an unlawfully reproduced layout-design (topography) or] a product incorporating an unlawfully reproduced layout-design (topography) [shall] [may] not itself be considered an infringement if, at the time of performance of the act in question, the person performing the act [establishes that he] did not know and had [no reasonable grounds to believe] that the layout-design (topography) was unlawfully reproduced. However, PARTIES [shall] [may] provide that, after the time [of receipt of notice] [that the person comes to know or has reasonable grounds to believe] that the layout-design (topography) 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 [a reasonable royalty] [an equitable remuneration] to the right holder.

4A.3a Non-voluntary licences shall not be granted for purposes or on terms which could result in a distortion of international trade.

4A.3b The conditions set out at point 5 of Section 5 above shall apply mutatis mutandis to the grant of any non-voluntary licences for layout-designs (topographies).

4A.3c Non-voluntary licences shall not be granted for layout-designs (topographies).

5. **Term of Protection**

5A (i) In PARTIES requiring registration as a condition of protection, layout-designs (topographies) shall be protected for a term of no less than 10 years from the date of [filing an application for registration] [registration] or of the first commercial exploitation wherever in the world it occurs, whichever 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].

(ii) In PARTIES not requiring registration as a condition for protection, layout-designs (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 layout-design (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].

[(iii) If registration is required by law, and no application is filed, the protection of the layout-design (topography) shall lapse after two years from the date of the first commercial exploitation wherever in the world it occurs.

(iv) Notwithstanding (i),(ii) and (iii) above, protection shall lapse 15 years after the creation of the layout-design (topography).]

SECTION 7: ACTS CONTRARY TO HONEST COMMERCIAL PRACTICES INCLUDING PROTECTION OF UNDISCLOSED INFORMATION

1. Protection of Undisclosed Information

1A.1 In the course of ensuring effective protection against unfair competition as provided for in Article 10bis of the Paris Convention (1967), PARTIES shall provide in their domestic law 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 such information:

1A.1.1 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 readily accessible; and

1A.1.2 has actual [or potential] commercial value because it is secret; and

1A.1.3 has been subject to reasonable steps, under the circumstances, by the person in possession of the information, to keep it secret.

1A.2 "A manner contrary to honest commercial practice" is understood to encompass, practices such as theft, bribery, breach of contract, breach of confidence, inducement to breach, electronic and other forms of commercial espionage, and includes the acquisition of trade secrets by third parties who knew [, or had reasonable grounds to know] that such practices were involved in the acquisition.

1A.3 PARTIES shall not limit the duration of protection under this section so long as the conditions stipulated at point 1A.1 exist.

2. Licensing

2Aa PARTIES shall not discourage or impede voluntary licensing of undisclosed information by imposing excessive or discriminatory conditions on such licences or conditions which dilute the value of such information.

2Ab There shall be no compulsory licensing of proprietary information.

3. Government Use

3Aa PARTIES, when requiring the publication or submission of undisclosed information consisting of test [or other] data, the origination of which involves a considerable effort, shall protect such data against unfair exploitation by competitors. The protection shall last for a reasonable time commensurate with the efforts involved in the origination of the data, the nature of the data, and the expenditure involved in their preparation, and shall take account of the availability of other forms of protection.

3Ab.1 PARTIES which require that trade secrets be submitted to carry out governmental functions, shall not use the trade secrets for the commercial or competitive benefit of the government or of any person other than the right holder except with the right holder's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given the right holder.

3Ab.2 PARTIES may disclose trade secrets to third parties, only with the right holder's consent or to the degree required to carry out necessary government functions. Wherever practicable, right holders shall be given an

opportunity to enter into confidentiality agreements with any non-government entity to which the PARTY is disclosing trade secrets to carry out necessary government functions.

3Ab.3 PARTIES may require right holders to disclose their trade secrets to third parties to protect human health or safety or to protect the environment only when the right holder is given an opportunity to enter into confidentiality agreements with any non-government entity receiving the trade secrets to prevent further disclosure or use of the trade secret.

3Ac.1 Proprietary information submitted to a government agency for purposes of regulatory approval procedures such as clinical or safety tests, shall not be disclosed without the consent of the proprietor, except to other governmental agencies if necessary to protect human, plant or animal life, health or the environment. Governmental agencies may disclose it only with the consent of the proprietor or to the extent indispensable to inform the general public about the actual or potential danger of a product. They shall not be entitled to use the information for commercial purposes.

3Ac.2 Disclosure of any proprietary information to a third party, or other governmental agencies, in the context of an application for obtaining intellectual property protection, shall be subject to an obligation to hear the applicant and to judicial review. Third parties and governmental agencies having obtained such information shall be prevented from further disclosure and commercial use of it without the consent of the proprietor.

SECTION 8: REMEDIES FOR NON-FULFILMENT OF OBLIGATIONS

1. Remedial Measures under National Legislation

1B PARTIES may adopt appropriate measures to remedy the non-fulfilment of obligations arising from the protection provided for intellectual property rights under the provisions of this agreement or in accordance with national legislation. Such measures may include:

(i) in respect of non-working or insufficient working of patents, the granting of a compulsory licence; (See also point 3 of Section 5 above)

(ii) compulsory licence may also be granted wherever necessary in public interest and to secure free competition and to prevent abuses by the holder of the right; (See also point 8 of Section 2, point 6 of Section 4, point 5 of Section 5, point 4.3 of Section 6 and point 2 of Section 7 above)

(iii) where the use of a trademark is required by national legislation to maintain trademark rights, the cancellation of the registration of such a trademark after a reasonable period, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner; (See also point 6 of Section 2 above)

(iv) in respect of abusive or anti-competitive practices in licensing contracts, the annulment of the contract or of those clauses of the contract deemed contrary to the laws and regulations governing competition and/or transfer of technology.

2. Co-operation to Ensure Fulfilment of Obligations

2B PARTIES undertake to ensure that intellectual property right holders who are nationals or domiciliaries of their territories comply with the obligations prescribed by this agreement or by the national legislation of any other PARTY in accordance with the provisions of this agreement.

SECTION 9: CONTROL OF ABUSIVE OR ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL

LICENCES

1. **National Legislation**

1B PARTIES may specify in their national legislation practices in licensing contracts deemed to constitute an abuse of intellectual property rights or to have an adverse effect on competition in the relevant market, and adopt appropriate measures to prevent or control such practices.

(See also point 6B of Part IX and point 6 of Section 4, points 5 and 6 of Section 5 and point 4.3 of Section 6 above)

2. **Consultation and Co-operation**

2B PARTIES agree that practices which restrain competition, limit access to the technology or to markets or foster monopolistic control, and which are engaged in by licensors, may have harmful effects on trade and transfer of technology among their countries. Accordingly, each PARTY agrees upon the request of any other PARTY to consult with respect to any such practices and to co-operate with other PARTIES with a view to ensuring that IPR owners, who are nationals or domiciliaries of its country, comply with the obligations prescribed in this respect by the national legislation of the PARTY granting them such rights.

PART IV: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

1. PARTIES shall ensure that effective [and appropriate] enforcement procedures are available under their national laws so as to enable action against any act of infringement of intellectual property rights covered by the agreement, including effective and expeditious remedies to stop [or prevent] infringements and remedies which constitute an effective deterrent to further infringements. In conformity with the provisions below, they shall provide such procedures [,internally and at the border,] by means of civil law, administrative law, or, where appropriate, criminal law, or a combination thereof. [Such procedures shall be provided consistently with each PARTY's legal and judicial systems and traditions and within the limits of its administrative resources and capabilities.] These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and provide for safeguards against their abuse.

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

3A Decisions on the merits of a case shall [, as a general rule,] [preferably] be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay. Decisions on the merits of a case shall only be based on such evidence in respect of which parties were offered the opportunity to be heard.

4A Parties to a dispute shall have an opportunity to appeal to a court of law against final administrative decisions [and [subject to jurisdictional provisions in national laws concerning the importance of a case, against the legal aspects of] all initial judicial decisions] on the merits of a case concerning the enforcement of an intellectual property right. However, there shall be no obligation to provide an opportunity to appeal against acquittals in criminal cases.

4B Provision shall be made for appeal against initial judicial orders and for judicial review of administrative orders.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

5. **Fair and Equitable Procedures**

5A.1 PARTIES shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered by this agreement.

5A.2 Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims.

5A.3 Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning personal appearances.

5A.4 All parties to such procedures shall be duly entitled to substantiate their claims and to present evidence.

5A.5 The procedure shall provide a means to identify and protect confidential information [without prejudice to the legitimate interests of any party to substantiate its claims].

5B There shall be prior notice given to parties to a legal proceeding and adequate opportunities for defence.

6. **Evidence of Proof**

6A.1 PARTIES shall provide courts with the authority, where a party has presented a [justifiable] [coherent] case and has identified evidence relevant to substantiation of its claim and which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject to conditions which ensure the protection of confidential information. [For the purposes of this agreement, a justifiable case is one in which a party has presented to the court reasonably available evidence sufficient to [indicate that its claims are not without foundation] [support its claims]].

6A.2 In addition to the preceding procedure, PARTIES may also provide access to relevant evidence through, for example, measures to preserve evidence, use of search and seizure authority, by rule or by exercise of other judicial or administrative authority.

6A.3 In cases in which another PARTY refuses access to or impedes a party's compliance with a request to provide necessary information or a party to the proceeding 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 provide that] preliminary and final determinations, affirmative or negative, may be made on the basis of the complaint or the allegation presented by the party adversely affected by the denial of access to information and/or on other facts and evidence before the court, subject to providing the parties an opportunity to be heard on the allegations or evidence.

7. **Injunctions**

7A The judicial authorities shall have the authority to issue upon request an order that an infringement be refrained from or discontinued, irrespective of whether the defendant has acted with intent or negligence.

7B Injunctions must be available.

8. **Damages**

8A The right holder shall be entitled to [obtain] [claim] from the infringer [adequate] [full] compensation for the injury he has suffered because of a [deliberate or negligent] infringement of his intellectual property right. The right holder shall also be entitled to claim remuneration for costs, including attorney fees, reasonably incurred in the proceedings. In appropriate cases, PARTIES may provide for recovery of profits and/or pre-established damages to be granted even where the infringer has not acted intentionally or negligently.

8B Courts shall have the authority to award damages.

9. **Remedies against Governments**

9A Notwithstanding the other provisions of this Part, when a government is sued for infringement of an intellectual property right as a result of the use of that right by or for the government, PARTIES may limit remedies against the government to payment of [full] [adequate] compensation to the right holder.

10. **Other Remedies**

10A Where an intellectual property right has been found to be infringed, the court shall have the authority to order, upon request of the right holder, that the infringing goods, as well as materials and implements the predominant use of which has been in the creation of the infringing goods, be, without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimise any harm caused to the right holder. In considering such a request, 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] [Other than in exceptional cases], the simple removal of the trade mark [or geographical indication] unlawfully affixed shall not be ordered.

11. **Right of Information**

11A [PARTIES may provide that,] unless this would be out of proportion to the seriousness 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 of their channels of distribution.

12. **Indemnification of the Defendant**

12A.1 Parties wrongfully enjoined or restrained by any measures taken for the purpose of enforcing intellectual property rights shall be entitled to claim from the party at whose request the measures were taken adequate compensation for the injury suffered because of an abuse of enforcement procedures and to claim reimbursement for the costs, including attorney fees, reasonably incurred in the proceedings.

12A.2 PARTIES may provide for the possibility that such parties [may] [shall] be entitled to claim compensation from [authorities] [public officials] in appropriate cases, such as negligent or deliberate improper conduct. [They shall provide for such possibility in the case of administrative ex officio action.]

13. **Administrative Procedures**

13A Administrative procedures concerning the enforcement of intellectual property rights shall [conform to principles equivalent] [correspond in substance] to those set forth in this Section for application to judicial proceedings.

SECTION 3: PROVISIONAL MEASURES

14A.1.1 The judicial authorities shall have the authority to order, upon request, 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;

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

14A.1.2 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.

14A.2 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].

14A.3 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 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.

14A.4 Where provisional measures according to point 14A.1.1(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.

14A.5 Without prejudice to point 14A.3, provisional measures taken on the basis of point 14.1 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 not exceeding [one month] [two weeks] after the notification of the provisional measures, unless determined otherwise by the court.

14A.6 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 for any injury caused [intentionally or negligently] by these measures, unless the parties reach an out-of-court settlement of the case.

14.7 Point 13 of this Part shall apply [accordingly] [mutatis mutandis] to provisional administrative procedures.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES[1]

15. **Suspension of Release by Customs Authorities**

15A Without prejudice to point 21 of this Part, PARTIES shall, in conformity with the provisions set out below, establish procedures according to which a right holder, who has valid grounds for suspecting that the importation of [goods which infringe his intellectual property right]

1It will be made clear at an appropriate place in any agreement that, for the European Communities and for the purposes of this Section, the term "border" is understood to mean the external border of the European Communities with third countries.

[counterfeit trademark or pirated copyright goods] may take place, may lodge an application in writing with the competent authorities, administrative or judicial, for the suspension by the customs authorities of the release

into free circulation of such goods. [This provision does not create an obligation to apply such procedures to parallel imports].

15B See point 8B of Part IX below.

15A.2 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.

16. **Application**

16A The application under point 15 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 at 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 customs authorities 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.

16B See point 9B(i) of Part IX.

17. **Security or Equivalent Assurance**

17A PARTIES shall seek to avoid border enforcement procedures being abused by means of unjustified or frivolous applications. For this purpose, they [may] [shall] require a right holder, who has lodged an application according to point 16 to provide a security or equivalent assurance. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

17B See point 9B(ii) of Part IX.

18. **Duration of Suspension**

18A The importer and the applicant shall be promptly notified of the suspension of the release of goods according to point 15 above. If, within ten working days after the applicant has [been served with a notice of the] [received]

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 [and unless this would be contrary to provision of domestic law]. In exceptional cases, the above time-limit may be extended by another ten working days.

18B See points 8B (last sentence) and 9B(iii) of Part IX.

19. **Indemnification of the Importer and of the Owner of the Goods**

19A The importer and the owner of the goods shall be entitled to claim from the applicant adequate compensation for any injury caused [intentionally or negligently] to them through the wrongful detention of goods or through the detention of goods released pursuant to point 18 above.

20. **Right of Information and Inspection**

20A 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.]

21. **Ex Officio Action**

21A.1.1 PARTIES may provide that the customs authorities have the right, but not an obligation, to inform the right-holder or his representative, wherever they have reasons to suspect an imminent importation of products the release of which into free circulation would contravene intellectual property rights of that right-holder.

21A.1.2 The exercise of this right of information shall not imply any liability for the customs authorities.

21A.1.3 This right of information is without prejudice to the provisions at points 15 to 20, 22 and 23.

21A.2.1 PARTIES may require the competent 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] [prima facie evidence] that an intellectual property right is being infringed.

21A.2.2 In this case, the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers.

21A.2.3 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 point 18 above.

21A.2.4 With regard to the importer's rights to claim compensation, the provisions at point 19 shall apply, mutatis mutandis.

22. **Remedies**

22A 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 destruction or disposal of the infringing goods in accordance with the principles set out at point 10 above. [Other than in exceptional circumstances] [With respect 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.

22B See point 10B of Part IX below.

23. **De Minimis Imports**

23A 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

24. PARTIES shall provide for criminal procedures and penalties to be applied in cases of wilful [trademark counterfeiting and copyright piracy on a commercial scale] [infringements of trademarks and copyright on a commercial scale] [infringements on a commercial scale of intellectual property rights concerned by this

agreement]. Remedies available 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 any device [the predominant use of which has been] [used] in the commission of the offence. 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 V: ACQUISITION OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES

1A Where the acquisition of an intellectual property right covered by this Annex is subject to the intellectual property right being granted or registered, 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] [and] [at reasonable cost] [at a cost commensurate with the service rendered].

2A Procedures concerning the acquisition or renewal of such intellectual property rights shall be governed by the general principles set out in Part IV at points 3 and 5.

3A Where the national law provides for opposition, revocation, cancellation or similar inter-partes procedures, they shall be [at reasonable cost] expeditious, effective, fair and equitable. [Such procedures shall give all parties concerned an opportunity to present their views and provide for rulings to be made on the basis of equitable and clear criteria.]

4A Final administrative decisions concerning the acquisition of an intellectual property right or any other matter subject to an inter-partes procedure referred to at point 3 above [other than pre-grant opposition procedures], shall be subject to the right of appeal in a court of law or quasi-judicial body.

PART IX: TRADE IN COUNTERFEIT AND PIRATED GOODS

1. **Preamble**

1B.1 Desirous of providing for adequate procedures and remedies to discourage international trade in counterfeit and pirated goods while ensuring an unimpeded flow of trade in legitimate goods;

1B.2 Deeming it highly desirable to ensure competition in international trade and to prevent arrangements which may restrain such competition;

1B.3 Recognizing the need to take into consideration the public policy objectives underlying national systems for the protection of intellectual property, including developmental and technological objectives;

1B.4 Recognizing also the special needs of the least developed countries in respect of maximum flexibility in the application of this Agreement in order to enable them to create a sound and viable technological base.

2. **Objectives**

2B With respect to intellectual property and international trade, PARTIES agree on the following objectives:

(i) To clarify GATT provisions related to the effects of the enforcement of intellectual property rights on international trade, in particular articles IX and XX(d), and to provide for adequate procedures and remedies to discourage international trade in counterfeit and pirated goods.

(ii) To ensure that such procedures and remedies do not themselves become barriers to legitimate trade and are not applied in a discriminatory manner to imported goods.

(iii) To ensure free flow of goods and prevent arrangements, effected by private or public commercial enterprises, which may result in the division of markets or otherwise restrain competition, thus having harmful effects on international trade.

SECTION 2: GUIDING PRINCIPLES AND NORMS

3. **Trade in Counterfeit and Pirated Goods**

3B.1 PARTIES undertake to discourage trade in counterfeit and pirated goods and to combat such trade without inhibiting the free flow of legitimate trade. For this purpose, PARTIES shall exchange information and promote

cooperation between customs authorities with respect to trade in counterfeit and pirated goods. They shall also adopt in their respective national legislation the necessary measures, procedures and remedies in this respect.

3B.2 For the purposes of this Agreement, trade in counterfeit goods means trade in goods which infringe a trademark validly registered in respect of such goods in the importing country, while trade in pirated goods means trade in goods which constitute a slavish copy of a work protected by copyright under the legislation of the country of importation.

4. **Safeguard against Creation of Trade Impediments in the Application of Measures and Procedures to Enforce Intellectual Property Rights**

4B In the application of national measures and procedures to enforce intellectual property rights, PARTIES undertake to avoid the creation of impediments or distortions to international trade, and to refrain from applying their national legislation in a discriminatory manner to imports from the territories of other PARTIES. For this purpose, they shall observe the principles of national treatment and MFN enshrined in the GATT.

5. **Non-recourse to Unilateral Measures**

5B PARTIES shall refrain, in relation to each other, from threatening or having recourse to unilaterally decided economic measures of any kind aimed at ensuring the enforcement of intellectual property rights.

6. **Control of Anti-competitive and Trade-distorting Practices**

6B PARTIES shall co-operate with each other to ensure the free flow of goods and prevent that intellectual property rights are used, through arrangements among enterprises, to create restrictions or distortions to international trade or to engage in anti-competitive practices having adverse effects on their trade. For this purpose, they undertake to exchange information and to agree upon the request of any other PARTY to consult with respect to any such practices and to take such measures in their territory as may be deemed appropriate with a view to eliminating the adverse effects of such practices.

7. **Transparency**

7B Laws, regulations, judicial decisions and administrative rulings pertaining to the application of the principles and norms prescribed in points 2 to 5 shall be made publicly available in the official language of the Party adopting such texts and, shall be provided, upon request, to any other Party.

SECTION 3: BORDER MEASURES RELATED TO COUNTERFEIT OR PIRATED GOODS

8. **Suspension of Customs Clearance**

8B PARTIES shall adopt the necessary measures and procedures, whether judicial or administrative, to enable intellectual property right holders, who may have valid grounds for suspecting that imported goods infringe their trademark or constitute a slavish copy of a work protected by copyright in accordance with the national legislation of the importing country, to obtain the suspension by the customs authorities of clearance from customs of such goods. Such suspension shall be for a limited period of time pending a determination by the competent authorities whether the goods are infringing.

8A (See point 15A of Part IV above).

9. **Safeguards against Obstacles to Legitimate Trade**

9B (i) Persons initiating the procedure for the suspension of clearance from customs shall be required to provide adequate documentary evidence to satisfy the competent authorities that prima facie there is an infringement of their right to protection in accordance with the relevant laws of the country of importation.

(ii) Such persons shall also be required to provide security by bond or deposit of money in an amount sufficient to indemnify the authorities or to hold the importer harmless from loss or damage resulting from the action undertaken.

(iii) The importers of such goods or other persons affected by the procedure shall be informed promptly of actions taken and shall be entitled to a judicial review of any final decision taken by an administrative authority.

9A (See points 16A, 17A and 18A of Part IV above).

10. **Disposal of Infringing Goods**

10B Where it is finally determined that the goods are infringing in accordance with the relevant laws of the importing country, the competent authorities shall provide for the forfeiture, destruction or disposal of the goods in a manner not prejudicial to the interests of the right holder.

10A (See point 22 of Part IV above).

ANNEX

PARTS I, VI, VII AND VIII OF THE COMPOSITE DRAFT TEXT OF 12 JUNE 1990

This Annex reproduces tel quel Parts I, VI, VII and VIII of the composite draft text which was circulated informally by the Chairman of the Negotiating Group on 12 June 1990. The text was prepared on the basis of the draft legal texts submitted by the European Communities (NG11/W/68), the United States (NG11/W/70), Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Peru, Tanzania and Uruguay, and subsequently also sponsored by Pakistan and Zimbabwe (NG11/W/71), Switzerland (NG11/W/73), Japan (NG11/W/74) and Australia (NG11/W/75).
The notes that follow reproduce the explanatory notes of the composite draft text. It should be noted that the system of notation is somewhat different from that of the profile contained in the body of this document, particularly that the letters A and B refer not to different general approaches but simply to different suggested formulations in regard to a specific point. The cross-references contained in this Annex refer to the draft composite text.

Notes on the composite text

1. In most of the text the language of the various proposals has been reproduced tel quel. In a few cases, slight modifications of a non-substantive nature have been made to the wording or structure of a sentence in order to simplify the common presentation of the various proposals. For this reason, the signatories of the proposed agreements have been referred to uniformly as "PARTIES", except in relation to those questions where it is important for the meaning to retain the original formulations, notably in the area of dispute settlement and institutional arrangements.

2. The numbers in bold type at the end of a paragraph or sub-paragraph indicate the NG11/W numbers of the proposals reproduced in that paragraph or sub-paragraph. Variations between those proposals are indicated by the use of square brackets within the paragraph or sub-paragraph.

3. The numbering and lettering in the left column has been included to facilitate reference. Related points have been grouped with a common number. Alternative proposals on the same issue have been indicated in the left column by capital letters. Where possible, the headings put forward in the proposals have been used; they are reproduced in bold type. To make the presentation as clear as possible, some additional headings have been employed; they are in ordinary type and placed in parentheses.

4. "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property. "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works. "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted at Rome, 26 October 1961.

PART I: PREAMBULAR PROVISIONS; OBJECTIVES

1. **Preamble (71); Objectives (73)**

1.1 Recalling the Ministerial Declaration of Punta del Este of 20 September 1986; **(73)**

1.2 Desiring to strengthen the role of GATT and its basic principles and to bring about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines; **(73)**

1.3 Recognizing that the lack of protection, or insufficient or excessive protection, of intellectual property rights causes nullification and impairment of advantages and benefits of the General Agreement on Tariffs and Trade and distortions detrimental to international trade, and that such nullification and impairment may be caused both by substantive and procedural deficiencies, including ineffective enforcement of existing laws, as well as by unjustifiable discrimination of foreign persons, legal entities, goods and services; **(73)**

1.4 Recognizing that adequate protection of intellectual property rights is an essential condition to foster international investment and transfer of technology; **(73)**

1.5 Recognizing the importance of protection of intellectual property rights for promoting innovation and creativity; **(71)**

1.6 Recognizing that adequate protection of intellectual property rights both internally and at the border is necessary to deter and persecute piracy and counterfeiting; **(73)**

1.7 Taking into account development, technological and public interest objectives of developing countries; **(71)**

1.8 Recognizing also the special needs of the least developed countries in respect of maximum flexibility in the application of this Agreement in order to enable them to create a sound and viable technological base; **(71)**

1.9 Recognizing the need for appropriate transitional arrangements for developing countries and least developed countries with a view to achieve successfully strengthened protection and enforcement of intellectual property rights; **(73)**

1.10 Recognizing the need to prevent disputes by providing adequate means of transparency of national laws, regulations and requirements regarding protection and enforcement of intellectual property rights; **(73)**

1.11 Recognizing the need to settle disputes on matters related to the protection of intellectual property rights on the basis of effective multilateral mechanisms and procedures, and to refrain from applying unilateral measures inconsistent with such procedures to PARTIES to this PART of the General Agreement; **(73)**

1.12 Recognizing the efforts to harmonize and promote intellectual property laws by international organizations specialized in the field of intellectual property law and that this PART of the General Agreement aims at further encouragement of such efforts; **(73)**

2. **Objective of the Agreement (74)**

2A The PARTIES agree to provide effective and adequate protection of intellectual property rights in order to ensure the reduction of distortions and impediments to [international (68)] [legitimate (70)] trade. The protection of intellectual property rights shall not itself create barriers to legitimate trade. **(68, 70)**

2B The objective of the present Agreement is to establish adequate standards for the protection of, and effective and appropriate means for the enforcement of intellectual property rights; thereby eliminating distortions and impediments to international trade related to intellectual property rights and foster its sound development. **(74)**

2C With respect to standards and principles concerning the availability, scope and use of intellectual property rights, PARTIES agree on the following objectives:

(i) To give full recognition to the needs for economic, social and technological development of all countries and the sovereign right of all States, when enacting national legislation, to ensure a proper balance between these needs and the rights granted to IPR holders and thus to determine the scope and level of protection of such rights, particularly in sectors of special public concern, such as health, nutrition, agriculture and national security. **(71)**

(ii) To set forth the principal rights and obligations of IP owners, taking into account the important inter-relationships between the scope of such rights and obligations and the promotion of social welfare and economic development. **(71)**

(iii)To facilitate the diffusion of technological knowledge and to enhance international transfer of technology, and thus contribute to a more active participation of all countries in world production and trade. **(71)**

(iv) To encourage technological innovation and promote inventiveness in all countries. **(71)**

(v) To enable participants to take all appropriate measures to prevent the abuses which might result from the exercise of IPRs and to ensure intergovernmental co-operation in this regard. **(71)**

PART VI. DISPUTE PREVENTION AND SETTLEMENT

1. Transparency (68, 70, 71, 73, 74)

1.1.1 [National (73)] (Publication) laws, regulations, judicial decisions and administrative rulings [of general application (68, 70, 74)] [of a precedential value (73)], [and all international agreements and decisions of international bodies (73)] [made effective by any PARTY, (70, 74)] pertaining to [the availability, scope, acquisition and enforcement of (68)] [the protection of (74)] intellectual property [rights (68, 74)] [laws (73)] (68, 70, 73, 74)] [the application of the principles and norms prescribed at points 9 and 11 of Part I and point 2A.1 of Part IV above (71)] shall be:

- published promptly by PARTIES. **(73)**

- [published, or where such publication is not practicable, (74)] made [publicly (74)] available [promptly (74)] in such a manner as to enable governments [of the PARTIES (74)] and [traders (68)] [other interested parties (74)] to become acquainted with them. **(68, 74)**

- shall be subject to the provisions of Article X of the General Agreement. **(70)**

- made publicly available in the official language of the PARTY adopting such texts and, shall be provided, upon request, to any other PARTY. **(71)**

1.1.2 Agreements concerning the protection of intellectual property rights which are in force between the government or governmental agency of any PARTY and the government or a governmental agency of any other PARTY to the Agreement shall also be published or made publicly available. The provision of this paragraph shall not 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. **(74)**

(Notification)

1.2A 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. **(68)**

1.2B.1 The Committee established under point 1B of Part VIII below shall ensure, in co-operation with the World Intellectual Property Organization and other international organizations, as appropriate, access to all international agreements, decisions of international bodies, national laws, regulations, judicial decisions and administrative rulings of a precedential value, related to the intellectual property laws of the PARTIES. **(73)**

1.2B.2 PARTIES shall promptly notify all international agreements, national laws and regulations, judicial decisions and administrative rulings of a precedential value relying upon an exception of the principles of National Treatment and Most-Favoured Nation Treatment through the Committee to the other PARTIES. **(73)**

1.2C PARTIES shall inform the TRIPS Committee, established under point 1C of Part VIII below, of any changes in their national laws and regulations concerning the protection of intellectual property rights (and any changes in their administration). PARTIES engaged in a special arrangement as stipulated in point 8B.2C.2 of Part II above shall inform the TRIPS Committee of the conclusion of such a special arrangement together with an outline of its contents. **(74)**

(Information on Request)

1.3A A 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. **(68)**

1.3B PARTIES shall, upon request from other PARTIES, provide information as promptly and as comprehensively as possible concerning application and administration of their national laws and regulations related to the protection of intellectual property rights. PARTIES shall notify the TRIPS Committee of the request and the provision of such information and shall provide the same information, when requested by other PARTIES, to the TRIPS Committee. **(74)**

1.3C PARTIES shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other PARTIES and persons and legal entities thereof regarding the PARTY's laws, regulations, and requirements for protection and enforcement of intellectual property rights. **(73)**

2. **Prior Consultation (68), Dispute Prevention (73)**

2A PARTIES shall make reasonable efforts within the framework of their constitutional systems to inform and, upon request, to consult with the other 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. **(68)**

2B.1 Whenever laws, regulations and practices relevant to, and affecting, the protection and enforcement of intellectual property rights are under review or intended to be introduced by a PARTY to this Agreement, such PARTY shall

- publish, in an official GATT language, a notice in a publication at an early appropriate stage that it proposes to introduce, amend or abolish legislation or regulation; **(73)**

- promptly provide, upon request, draft legislation and draft regulations, including explanatory materials, to such PARTIES; **(73)**

- allow, without discrimination, reasonable time of no less than [X] months for other PARTIES to submit comments in writing on the basis of the General Agreement; **(73)**

- consult with interested PARTIES, upon request, on the basis of comments submitted. **(73)**

2B.2 None of these obligations is meant to limit the sovereignty of PARTIES to legislate, regulate and adjudicate in conformity with international obligations. **(73)**

3. **Dispute Settlement (68, 71, 73)**; **Consultation, Dispute Settlement (74)**

3A 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. **(68)**

3B (i) Disputes arising under this PART shall be settled on the basis of Article XXII and Article XXIII and in accordance with the consolidated instrument [name]. **(73)**

(ii) Non-compliance with obligations under this PART shall be deemed to cause nullification and impairment of advantages and benefits accruing under the General Agreement on Tariffs and Trade. **(73)**

(iii) PARTIES shall refrain from taking any measure against another PARTY other than those provided for under the rules on dispute settlement within the General Agreement on Tariffs and Trade. **(73)**

3C A PARTY shall not suspend, or threaten to suspend, its obligations under the Agreement without abiding by the procedures for settlement of disputes set out in this section. **(74)**

3D.1 **Consultations (71)**

(a) Where a dispute arises concerning the interpretation or implementation of any provisions of this Agreement, a PARTY may bring the matter to the attention of another PARTY and request the latter to enter into consultations with it. **(71)**

(b) The PARTY so requested shall provide promptly an adequate opportunity for the requested consultations. **(71)**

(c) PARTIES engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution to the dispute. **(71)**

3D.2 **Other Means of Settlement (71)**

If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to at point 3D.1, PARTIES to the dispute may agree to resort to other means designed to lead to an amicable settlement of their dispute, such as good offices, conciliation, mediation and arbitration. **(71)**

3D.3 **Non-Recourse to Unilateral Measures (71)**

PARTIES shall refrain, in relation to each other, from threatening or having recourse to unilaterally decided measures of any kind aimed at ensuring the enforcement of intellectual property rights. **(71)**
(See also point 11 of Part II above)

PART VII: **TRANSITIONAL ARRANGEMENTS**

1. **Transitional Period (68); Transitional Arrangements for Developing Countries and Technical Cooperation (73)**; **Transitional Arrangements (74)**

1A 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 points 6, 7 and 8 of PART II, 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. **(68)**

1B.1 **Developing Countries (73)**

(i) With a view to achieve full and successful adjustment and compliance with levels of protection and enforcement set forth in Parts III and IV above, and provided that existing levels of protection and enforcement are not reduced, developing PARTIES may not apply such standards for a period of a total of [X] years beginning with the date of acceptance or accession of such PARTY, but not later than the year [Z]. **(73)**

(ii) Delay in implementation of obligations under Parts III and IV above may be extended upon duly motivated request for a further period not exceeding [X] years by the Committee established under point 1B of Part VIII below. Such decision shall take into account the level of technological and commercial development of the requesting PARTY. **(73)**

(iii)Non-application of levels of protection set forth in Parts III and IV above after final expiration of the transitional period agreed shall entitle other PARTIES, without prejudice to other rights under the General Agreement, to suspend the application points 7 and 8 of Part II above and grant protection of intellectual property rights on the basis of reciprocity. **(73)**

1B.2 **Least-Developed Countries (73)**

(i) With a view to achieve full and successful adjustment and compliance with levels of protection and enforcement set forth in Parts III and IV above, least developed PARTIES are not expected to apply such standards for a period of a total of [X+Y] years. **(73)**

(ii) Delay of implementation of obligations may be further extended upon request by the Committee established under point 1B of Part VIII below. **(73)**

2. **Technical Assistance (68); Technical Cooperation (73)**; **International Cooperation, Technical Assistance (74)**

2A Developed PARTIES shall, if requested, advise developing 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. **(68)**

2B PARTIES to this Agreement shall provide for technical co-operation to developing and least developed PARTIES upon coordination by the Committee established under point 1B of Part VIII below in collaboration with the World Intellectual Property Organization, and other international organizations, as appropriate. Upon request, such co-operation includes support and advice as to training of personnel, the

introduction, amendment and implementation of national laws, regulations and practices, and assistance by the Committee for settlement of disputes. **(73)**

PART VIII: INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Committee on Trade-Related Intellectual Property Rights (68); The Committee on Trade-Related Aspects of Intellectual Propery Law (73); The TRIPS Committee (74)

1A PARTIES shall establish a Committee on Trade Related Intellectual Property Rights composed of representatives from each 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 PARTY. The Committee shall monitor the operation of this Annex and, in particular, PARTIES' compliance with their obligations hereunder, and shall afford 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. **(68)**

1B (i) All PARTIES shall be represented in the Committee on Trade-Related Aspects of Intellectual Property Rights (hereinafter the Committee). It shall elect its Chairman annually and meet as necessary, but not less than once a year. It shall carry out its responsibilities as assigned to it under this PART or by the PARTIES. It may establish working groups. **(73)**

(ii) The Committee shall monitor the implementation and operation of this PART, taking into account the objectives thereof. It shall examine periodical country reports prepared by the GATT Secretariat on laws, regulations, practices and international agreements related to, and affecting, the protection of intellectual property rights. It shall make recommendations, as appropriate, to the PARTIES concerned. **(73)**

(iii) The Committee shall periodically agree upon a schedule of country reports. It shall adopt a work programme and coordinate activities of PARTIES in the field of technical cooperation. **(73)**

(iv) The Committee shall annually report to the CONTRACTING PARTIES. It may submit recommendations. **(73)**

(v) The Committee is entitled to elaborate and adopt guidelines for the interpretation, in particular of PARTS III and IV above. It shall take into account relevant findings of adopted panel reports. **(73)**

1C The TRIPS Committee composed of representatives of the PARTIES shall be established. The TRIPS Committee shall carry out functions under this Agreement or otherwise assigned to it by the PARTIES. **(74)**

Joint Expert Group (68), Joint Group of Experts (73)

2A 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. **(68)**

2B In order to promote co-operation between the Committee and bodies under the World Intellectual Property Organization, the Committee may establish, as appropriate, Joint Groups of Experts consisting of representatives of the PARTIES and of the Member States of the Unions created by the Paris Convention

(1967) and the Berne Convention (1971) respectively. Upon request of the Committee, the Joint Groups of Experts shall give advice on technical matters under consideration. **(73)**

3. **Other Conventions (68)**

PARTIES shall, within a period of [-] years, adhere to the Paris Convention (1967), and the Berne Convention (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. **(68)**

4. **International Cooperation (68)**

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. **(68)**

(See also point 1.1 of Part IX below)

5. **Relationship to Other Parts of the General Agreement on Tariffs and Trade (73)**

Other provisions of the General Agreement shall apply to the extent that this PART does not provide for more specific rights, obligations and exceptions thereof. **(73)**

(See also point 5 of PART II)

6. **Provisional Application (73)**

Pending the entry into force in accordance with Article XXX:1, this PART shall be applied provisionally. It shall become effective between PARTIES upon acceptance at [date]. For each other contracting party, it

shall apply provisionally with the thirtieth day following the date of accession. **(73)**

7. **Review and Amendment (68)**; **Amendments (73)**

7A PARTIES shall review the implementation of this Annex after the expiration of the transitional period referred to at point 1 of Part VII above. They shall, having regard to the experience gained in its implementation, review it [-] years after that date, and at identical intervals thereafter. The PARTIES shall also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this annex. **(68)**

7B (i) Amendments to this PART shall take effect in accordance with the provisions on entry into force and on provisional application. **(73)**

(ii) Amendments merely serving the purpose to adjust 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 Committee. **(73)**

8. **Withdrawal (73)**

Pending the entry into force, withdrawal from this PART shall be effected in accordance with the Protocol of Provisional Application of the General Agreement on Tariffs and Trade or the respective Protocol of Accession of contracting parties to the General Agreement on Tariffs and Trade. **(73)**