

# AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF CAMBODIA ON TRADE RELATIONS AND INTELLECTUAL PROPERTY RIGHTS PROTECTION

## PREAMBLE

The United States of America and the Kingdom of Cambodia (hereinafter referred to collectively as "Parties" and individually as "Party),

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging the importance of intellectual property rights protection to economic development and growth,

Acknowledging that the development of trade relations and direct contact between nationals and companies of both Parties will promote openness and mutual understanding,

Considering that expanded trade relations between the Parties - will contribute to the general well-being of the peoples of each Party,

Having agreed that economic ties are an important and necessary element in the strengthening of their bilateral relations, and

Being convinced that an agreement on trade relations between the two Parties will best serve their mutual interests,

Have agreed as follows:

## CHAPTER I

### TRADE

#### ARTICLE I

##### MOST-FAVORED-NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in, or exported to the territory of any third country in all matters relating to:

A. customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

B. methods of payment for imports and exports, and the international transfer of such payments;

C. rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

D. taxes and other internal charges of any kind applied directly or indirectly to imported products; and

E. laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation, distribution, storage and use of products in the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

3. Each Party shall accord to imports of products and services originating in the territory of the other Party nondiscriminatory treatment with respect to the allocation of and access to the currency needed to pay for such imports.

4. The provisions of section 1 and 2 of this Article shall not preclude action by either Party which is required or specifically permitted by any agreement administered by the World Trade Organization ("WTO"), or by any joint action or decision of the Members of the WTO, during such time as such Party is a Member of the WTO. Similarly, the provisions of sections 1 and 2 shall not, apply to special advantages accorded by virtue of an agreement administered by the WTO.

5. The provisions of sections 1 and 2 of this Article shall not apply to:

A. advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area, and

B. advantages accorded to third countries for the facilitation of frontier traffic.

6. The provisions of section 2 of this Article shall not apply to trade in textiles and textile products.

## ARTICLE II

### NATIONAL TREATMENT

For the purposes of Chapter I of this Agreement:

1. Each Party shall administer tariff and nontariff measures affecting trade in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

2. Accordingly, neither Party shall impose, directly or indirectly, on the products of the other Party imported into its territory, internal taxes or charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

3. Each Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to, like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use.

4. In addition to the obligations of sections 2 and 3 of this Article, the charges and measures described in sections 2 and 3 of this Article shall not otherwise be applied to imported or domestic products so as to afford protection to domestic production.

5. The Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade or to protect domestic production. Furthermore, each Party shall accord products imported from the territory of the other Party treatment no less favorable than the better of the treatment accorded to like domestic products or like products originating in any third country in relation to such technical regulations or standards, including conformity testing and certification.

6. If a Party has not acceded to the International Convention on the Harmonized Commodity Description and Coding System, it will undertake every reasonable effort to do so as soon as possible, but in any event no later than by December 31, 1997.

### ARTICLE III

#### GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. The Parties shall seek to achieve a satisfactory balance of market access opportunities through the satisfactory reciprocation of reductions in tariffs and nontariff-barriers to trade resulting from multilateral negotiations.
2. Neither Party shall require its nationals or companies to engage in barter or countertrade transactions with nationals or companies of the other Party. Nevertheless, where nationals or companies decide to resort to barter or countertrade operations, the Parties may furnish them information to facilitate the transaction.

### ARTICLE IV

#### EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate trade in goods and services and to secure favorable conditions for long-term development of trade relations between their respective nationals and companies.
2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.
3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

### ARTICLE V

#### GOVERNMENT COMMERCIAL OFFICES

1. Subject to its laws and regulations governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures, third-country nationals.
2. Each Party shall ensure unhindered access of host country nationals to government commercial offices of the other Party.
3. Each Party shall encourage the participation of its nationals and companies in the activities of the other Party's government commercial offices, especially with respect to events held on the premises of such commercial offices.

4. Each Party shall encourage and facilitate access by government commercial office personnel of the other Party to host-country officials at both the national and subnational level, and to representatives of nationals and companies of the host Party.

## ARTICLE VI

### FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to such transactions, all commercial transactions shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.

2. Neither Party shall restrict the transfer from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals and companies of the other Party.

3. Without derogation from section 2 of this Article, in connection with trade in products and services, each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:

A. opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited in financial institutions located in the territory of the Party;

B. payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country; and

C. rates of exchange and related matters, including access to freely usable currencies.

## ARTICLE VII

### TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, intellectual property, taxation, banking, insurance and other financial services, transport and labor.

2. Each Party shall provide nationals and companies of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow, to the extent possible, the other Party and its nationals the opportunity to comment on the formulation of rules and regulations which affect the conduct of business activities covered by this Agreement.

## ARTICLE VIII

### AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base possible in all fields deemed to be in their mutual interest.

2. The Parties, taking account the growing economic significance of service industries, shall consult on matters affecting the conduct of service business between the two countries and

particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

## ARTICLE IX

### EMERGENCY ACTION ON IMPORTS

1. If, as a result of unforeseen developments and of the effect of the obligations incurred by a Party under any agreement administered by the WTO or this Agreement, including tariff concessions, any product is being imported into the territory of that Party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the Party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

2. Before a Party shall take action pursuant to the provisions of section 1 of this Article, if the other Party has a substantial interest as exporter of the product concerned, then the importing Party shall afford the other Party an opportunity to consult with it in respect of the proposed action. In critical circumstances where delay would cause damage which it would be difficult to repair, action under section 1 of this Article may be taken provisionally without prior notice or consultation, on the condition that consultations shall be effected immediately after taking such action.

3. Unless a different solution is mutually agreed upon during the consultations, the importing Party shall be free to take or continue action under section 1 of this Article. In that event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

4. The Parties acknowledge that the elaboration of the emergency action provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

## ARTICLE X

### COMMERCIAL DISPUTES

For the purposes of Chapter I of this Agreement:

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not be entitled to claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States of America and nationals or companies of the Kingdom of Cambodia. Such arbitration may be provided for by agreements in contracts between such nationals and companies, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules of December 15, 1976 and any modifications thereto, in which case the parties should designate an Appointing Authority under said rules in a country other than the United States of America or the Kingdom of Cambodia.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States of America or the Kingdom of Cambodia, that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or on the law to be applied in such arbitration, or other forms of dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

## CHAPTER II

### INTELLECTUAL PROPERTY RIGHTS

#### ARTICLE XI

##### NATURE AND SCOPE OF INTELLECTUAL PROPERTY RIGHTS OBLIGATIONS

1. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, observe the commitments set forth in this Agreement and adhere to, or rejoin or reestablish its membership in, the Conventions listed below:

A. the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplications of their Phonograms, 1971 (Geneva Convention);

B. the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971) (Berne Convention);

C. the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention); and

D. the International Convention for the Protection of New Varieties of Plants, 1978 (UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention).

If the Party has not acceded to, or rejoined or reestablished its membership in, the specified text of these conventions on or before the date of entry into force of this Agreement, it shall make every reasonable effort to do so as soon as possible, but no later than December 31, 1998.

2. Nothing in this Agreement shall derogate from law and regulation, administrative practices or procedures, or administrative or adjudicatory decisions of either Party that provide more extensive protection of intellectual property rights than is accorded by this Agreement.

#### ARTICLE XII

##### NATIONAL TREATMENT

For the purposes of Chapter II of this Agreement:

1. Each Party shall accord to nationals of the other Party treatment no less favorable than it provides to its own nationals with respect to the acquisition, protection, enjoyment and enforcement of intellectual property rights and any benefits derived therefrom.
2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions (including fixation, publication or exploitation in the territory of a Party) in order to acquire, enjoy, enforce and exercise rights or benefits in respect of copyright and related rights.
3. A Party may derogate from section 2 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of the other Party to designate for service of process an address in the Party's territory or to appoint an agent in the Party's territory, if the derogation is consistent with the relevant Convention listed in Article XI above, provided that such derogation:
  - A. is necessary to secure compliance with measures that are not inconsistent with this Agreement; and
  - B. is not applied in a manner that would constitute a restriction on trade.
4. No Party shall have any obligation under this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

## ARTICLE XIII

### COPYRIGHT

1. Each Party shall protect all works which embody original expression within the meaning of the Berne Convention (1971). In particular:
  - A. all types of computer programs are literary works within the meaning of the Berne Convention and shall be protected as such; and,
  - B. compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.

The protection a Party provides under paragraph B a shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.
2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by section 1, including the right to authorize or prohibit:
  - A. the importation into the Party's territory of copies of the work, regardless of whether such copies have been placed on the market by the relevant right holder;
  - B. the first public distribution of the original and each copy of the work by sale, rental or otherwise;
  - C. the communication of a work to the public; and

D. the rental of the original or a copy of a computer program for direct or indirect commercial advantage.

Paragraph D shall not apply where the copy of the computer program is not itself an essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall exhaust the rental right.

3. Each Party shall provide that for copyright and related rights:

A. any person acquiring or holding economic rights may freely and separately transfer such rights by contract; and

B. any person acquiring or holding such economic rights, by virtue of a contract, including contracts of employment underlying the, creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

4. No Party may, as a condition of according protection under this Article, require right holders to comply with any formalities in order to acquire rights in respect of copyright and related rights. If a Party grants any right or benefit in a work, phonogram or videogram, including remuneration from levies for private copying or rental activity, all such benefits shall be available on the basis of national treatment to nationals of the other Party.

5. Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 75 years from the end of the calendar year of first authorized publication, or, failing such authorized publication within 25 years from the making of the work, 100 years from the end of the calendar year of making.

6. Each Party shall confine limitations upon or exceptions to exclusive rights in respect of copyright and related rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder, and do not conflict with any other Article of this Agreement.

7. Translation and reproduction licenses permitted under the Appendix to the Berne Convention (1971) shall not be granted where the legitimate local needs of a Party could be met by voluntary actions of right holders, but for obstacles resulting from measures taken by that Party.

8. Each Party shall provide to the right holder in a sound recording the right to authorize or prohibit:

A. the direct or indirect reproduction, in whole or in part, of the sound recording;

B. the importation into the Party's territory of copies of the sound recording, regardless of whether such copies have been placed on the market by the relevant right holder;

C. the first public distribution of the original and each copy of the sound recording by sale, rental or otherwise; and

D. the rental, lease or lending of the original that copy of the sound recording for the purposes of direct or indirect commercial advantage.

Each Party shall provide that putting the original or a copy of a sound recording on the market with the right holder's consent shall not exhaust the rental right.

9. Each Party shall, through operation of this Agreement, apply the provisions of Article 18 of the Berne Convention for the Protection of Literary and Artistic Works to rights in existing sound recordings.

#### ARTICLE XIV

##### PROTECTION OF ENCRYPTED SATELLITE SIGNALS

1. Each Party shall make it:

A. a criminal offense to manufacture, assemble, modify, import, export, sell, lease or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal, without the authorization of the lawful distributor of such signal; and

B. a criminal offense willfully to receive or further distribute an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal; and

C. a civil offense to engage in any activity prohibited under paragraph A or B.

Each Party shall provide that any civil offense established under paragraph C shall be actionable by any person that holds an interest in the encrypted programming signal or the content thereof.

#### ARTICLE XV

##### LAYOUT DESIGNS OF SEMICONDUCTOR INTEGRATED CIRCUITS

1. Each Party shall protect layout designs (topographies) of integrated circuits ("layout designs") in accordance with Articles 2 through 7, 12 and 16(3), other than Article 6(3), of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on May 26, 1989 and, in addition, shall comply with the following provisions.

2. Subject to section 3, each Party shall make it unlawful for any person without the right holder's authorization to reproduce, import or distribute a protected layout design, an integrated circuit in which a protected layout design is incorporated, or an article incorporating such an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout design.

3. Neither Party may make unlawful any of the acts referred to in section 2 performed in respect of an integrated circuit that incorporates an unlawfully reproduced layout design, or any article that incorporates such an Integrated circuit, where the person performing those acts or ordering those acts to be done did not know and had no reasonable ground to know, when it acquired the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.

4. Each Party shall provide that, after the person referred to in section 3 has received sufficient notice that the layout design was unlawfully reproduced, such person may perform any of the acts with respect to the stock on hand or ordered before such notice, but shall be liable to pay the right holder for doing so an amount equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design.

5. Neither Party may permit the compulsory licensing of layout designs of integrated circuits.

6. The term of protection for the layout design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the design, if required, whichever is earlier.

## ARTICLE XVI

### TRADEMARKS

1. For purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including words, personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging. Trademarks shall include service marks, collective marks, and certification marks.

2. Each Party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.

#### 3. Acquisition of Rights

A. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. Neither Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.

B. Each Party shall provide a system for registering trademarks, which shall include examination of applications, notification to an applicant of reasons for refusing registration, and an opportunity to respond to such notice. Each Party shall publish each trademark before registration or promptly thereafter. Each Party shall afford a reasonable opportunity for interested parties to petition to cancel registrations and to oppose registrations.

C. 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.

D. Each Party 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. Article 6 bis of the Paris Convention shall apply, with such modifications as are necessary, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. Neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services or that the trademark be registered.

E. Each Party shall use the International Classification of Goods and Services for registration. Neither Party shall use such classification as the basis for determining the likelihood of confusion.

F. Each Party shall prohibit the registration as a trademark of words that generically designate goods or services or types of goods or services to which the trademark applies.

G. Each Party shall refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or a Party's national symbols, or bring them into contempt or dispute.

4. Initial registration of a trademark shall be for a term of at least 10 years. The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years when conditions for renewal have been met.

#### 5. Requirement of Use

A. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled only after an uninterrupted period-of at least two years of nonuse, unless legitimate reasons for non-use exist. Use of the trademark, where such use is subject to the owner's control, shall be recognized as use of the trademark for the purpose of maintaining the registration.

B. Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the trademark holder such as import restrictions on or other government requirements for products protected by the trademark which constitute an obstacle to the use of the mark.

C. Neither Party may encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademarks function as an indication of source or a use with another trademark.

6. A Party may provide limited exceptions to the rights conferred by a trademark, such as a fair use of descriptive terms, provided that such exceptions take into account the legitimate interests of the trademark owner and of other persons.

7. Compulsory licensing of trademarks shall not be permitted. The owner of a registered trademark shall have the right to assign its trademark with or without the transfer of the business to which the trademark belongs. However, a Party may require transfer of goodwill in a mark as part of the valid transfer of the mark.

## ARTICLE XVII

### INDUSTRIAL DESIGNS

#### 1. Requirements for Protection

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

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

## 2. Protection

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

B. Parties may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design.

C. The duration of protection available shall amount to at least ten years.

## ARTICLE XVIII

### PATENTS

#### 1. Patentable Subject Matter

A. Each Party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For the purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial applications" to be synonymous with the terms "non-obvious" and "useful," respectively.

B. Patents shall be available and patent rights enjoyable without discrimination as to the field of technology or whether products are imported or locally produced.

#### 2. Rights Conferred

A. A patent shall confer on the patent owner the right to prevent others from making, using, or selling the subject matter of the patent without his consent. In the case of a patented process, the patent confers on the patent owner the right to prevent others from using that process and from using, selling, or importing the product obtained directly by that process without his consent.

B. Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer in one or both of the following situations:

(1) the product is new, or

(2) a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used. In the gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his confidential information shall be taken into account.

C. A patent may be revoked only on grounds that would have justified a refusal to grant the patent.

D. Patent owners may assign and transfer by succession their patents and conclude licensing contracts.

E. Each Party may allow for the lapse of a patent there the fees required to maintain the patent in force are not paid within prescribed time periods.

3. Each Party may provide limited exceptions to the exclusive-rights conferred by a patent, provided that such exceptions do not conflict with the normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the right holder.

4. Each Party shall provide a term of protection of at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent. Parties may extend the terms of patents, in appropriate cases, to compensate for delays caused by regulatory approval processes.

5. If a Party has not made available patent protection for products subject to a regulatory review period prior to its commercial marketing or use commensurate with section 1 as of seventeen years prior to the date of this Agreement, that Party shall provide to the inventor of any such product or its assignee the means to obtain product patent protection or equivalent protection for such product for the unexpired term of the patent for such product granted in the other Party, as long as the product has not been marketed at the time of Agreement in the Party providing protection under this section and the person seeking such protection makes a timely request. The transitional protection must, at least, give the patent owner or his assignee the right to exclude others from making, using and selling the invention during the remaining term of the patent granted by the other Party.

6. Where the law of a Party allows for use of the subject matter of a patent without the authorization of the right holder, other than that allowed under section 3, including use by the government or third parties authorized by the government, the following provisions shall be respected:

A. authorization of such use shall be considered on its individual merits;

B. such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

C. the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be detrimental;

D. such use shall be non-exclusive;

E. such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

F. any such use shall be authorized predominantly for the supply of the domestic market of the Party authorizing such use;

G. authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

H. the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

I. the legal validity of any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Party;

K. Parties are not obliged to apply, the conditions set forth in paragraphs B and F above where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

L. Neither Party may authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anticompetitive practices.

## ARTICLE XIX

### ACTS CONTRARY TO HONEST COMMERCIAL PRACTICE AND THE PROTECTION OF TRADE SECRETS

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), each Party shall protect undisclosed information in accordance with section 2 below and data submitted to government or governmental agencies in accordance with sections 5 and 6 below.

2. Each Party shall provide the legal means for any person to prevent confidential information from being disclosed to, acquired by, or used by others, without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as, and for so long as:

A. the information is not generally known among or readily accessible to persons that normally deal with the kind of information in question;

B. the information has, actual or potential commercial value because it is secret; and

C. the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.

3. Neither Party shall limit the duration of protection for confidential information so long as the conditions in section 2 of this Article exist.

4. Neither Party shall discourage or impede voluntary licensing of confidential information by imposing excessive or discriminatory conditions on such licenses or conditions which dilute the value of confidential information.

5. Government Use

A. If a Party requires, as a condition of approving the marketing of pharmaceutical or agricultural chemical products which utilize new chemical entities, the submission of confidential test or other data necessary to determine whether the use of such products is safe and effective the Party shall protect against disclosure of the data of persons making such submissions where-the origination of such data involves considerable effort, except where necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

B. Unless the person submitting the information agrees, the data submitted pursuant to paragraph A may not be relied upon for the approval of competing products for a reasonable period of time, taking into account the efforts involved in the origination of the data, their nature, and the expenditure involved in their preparation, and such period of time shall generally be not less than five years from the date of marketing approval.

C. Where a Party relies upon a marketing approval granted by another Party, the reasonable period of exclusive use at the data submitted in connection with obtaining the approval relied upon shall commence with the date of the first marketing approval relied upon.

## ARTICLE XX

### ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

For the purposes of Chapter II of this Agreement:

#### 1. General Provisions

A. Each Party shall ensure that enforcement procedures as specified in this Article are available under national laws so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement including expeditious remedies to prevent or stop infringement and remedies which constitute a deterrent to further infringements. In applying these procedures and remedies, parties shall provide safeguards against abuse and shall avoid creating obstacles to legitimate trade.

B. Procedures for enforcing intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

C. Each Party shall ensure that decisions on the merits of a case in judicial and administrative enforcement proceedings are, as a general rule, in writing and state the reasons on which the decisions are based; made available without undue delay at least to the parties in a proceeding; and based only on evidence in respect of which such parties were offered the opportunity to be heard.

D. Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in each Party's laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided. Notwithstanding the above, neither Party shall be required to provide for judicial review of acquittals in criminal cases.

#### 2. Specific Procedural and Remedial Aspects Of Civil Actions

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

B. Each Party shall provide its judicial authorities the authority to order a party to a proceeding to desist from an infringement, including to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right. Neither Party is required to accord such authority in respect of protected subject matter acquired or ordered by a person or entity prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

C. Each Party shall provide its judicial authorities the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

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

E. Each Party shall provide its judicial authorities the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of his intellectual property right by an infringer who knew or had reasonable grounds to know that he was engaged in infringing activity. Judicial authorities shall also have, the power, at least with respect to works protected under copyright and neighboring rights, to order pre-established damages.

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

G. Notwithstanding the other provisions of this Article XX, when a Party to this Agreement is sued with respect to infringement of an intellectual property right as a result of its use of that right or use on its behalf, the Party may limit remedies against the government to payment of full compensation to the right-holder.

H. Each Party shall authorize its judicial authorities to order the infringer of an intellectual property right to pay the right holder's expenses, which may include attorney's fees.

I. Each Party shall provide its judicial authorities the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.

J. Each Party may also provide administrative procedures to enforce intellectual property rights. To the extent that any civil remedy can be ordered as a result of an administrative decision on the merits of a case, the procedures shall conform to principles equivalent in substance to those set forth in this Article XX, section 2.

### 3. Provisional measures

A. Each Party shall provide its judicial authorities the authority to order prompt and effective provisional measures:

(1) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at the border; and

(2) to preserve relevant evidence in regard to the alleged infringement

B. Each Party shall authorize its judicial authorities to require the applicant for provisional measures to provide any evidence reasonably available to that applicant in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder, that his right is being infringed or such infringement is imminent, and that any delay is likely to cause irreparable harm to the right holder or there is a demonstrable risk of evidence being destroyed. Each Party shall also authorize its judicial authority to require the right-holder to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

C. Each Party shall authorize its judicial authorities to adopt provisional measures on an ex parte basis, 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.

D. Where provisional measures have been adopted on an ex parte basis, the parties affected shall be given notice, without delay, after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

E. Without prejudice to paragraph D above, provisional measures taken on the basis of paragraphs A and C above shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period not exceeding one month after the notification of the provisional measures, unless determined otherwise by the judicial authority.

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

G. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in section 3 of this Article.

#### 4. Criminal Procedures

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting and copyright piracy on a commercial scale. Penalties 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 in the commission of the offense. Each Party 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 willfully and on a commercial scale.

### ARTICLE XXI

#### ENFORCEMENT AT THE BORDER

1. Each Party shall adopt procedures to, enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or unauthorized copies of copyright goods may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.

2. Each Party shall require any applicant who initiates procedures under section 1 to provide adequate evidence:

A. to satisfy that Party's competent authorities that, under its domestic laws, there is prima facie an infringement of its intellectual property right; and

B. to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.

3. Each Party shall authorize its competent authorities to require an applicant under section 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

4. A Party's customs administration, upon receiving an application pursuant to procedures adopted in accordance with this Article XXI, may suspend the release of goods involving industrial designs, patents, integrated circuits or trade secrets into free circulation on the basis of a decision other than by a judicial or other independent authority; provided, however, if the period set forth in sections 6 through 8 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, such Party shall permit the owner, importer or consignee of such goods to receive such goods for entry into commerce on the posting of a security in an amount sufficient to protect the right holder against any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.

5. Each Party shall ensure that its customs administration will promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to section 1.

6. Each Party shall ensure that its customs administration will release goods from suspension if within a period not exceeding 10 working days after the applicant under section 1 has been served notice of the suspension the customs administration has not been informed that:

A. a party other than the defendant has initiated proceedings leading to a decision on the merits (of the case, or

B. a competent authority has taken provisional measures prolonging the suspension; provided that all other conditions for importation or exportation have been met. Each Party shall provide that, in appropriate cases, the customs administration may extend the suspension by another 10 working days.

7. Each Party shall ensure that if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place on request of the defendant with a view to deciding, within a reasonable period, whether the measures shall be modified, revoked or confirmed.

8. Notwithstanding sections 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, section 3:E of Article XX shall apply.

9. Each Party shall ensure that its competent authorities have the authority to order the applicant under section 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to section 6.

10. Without prejudice to the protection of confidential information, each Party shall ensure that its competent authorities have the authority to give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate its claims. Each Party shall also ensure that its competent authorities have the authority to give the importer an equivalent opportunity to have any such goods inspected. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.

11. Where a Party requires its competent authorities to act on their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

A. the competent authorities may at any time seek from the right holder any information that might assist them to exercise these powers;

B. the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as may be necessary, set out in sections 6 through 8; and

C. the Party may exempt public authorities and officials from liability, except when the offending actions were not taken or intended in good faith.

12. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in section 2:F of Article XX. In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

13. A Party may exclude from the application of sections 1 through 12 small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments that are not repetitive.

## ARTICLE XXII

### TIMING OF SPECIFIC INTELLECTUAL PROPERTY OBLIGATIONS

1. Each Party shall submit any legislation and issue any regulations necessary to carry out fully its obligations under Articles XIII, XVI, XVII and XX no later than eighteen months following the entry into force of this Agreement, and exert its best efforts to enact and implement such legislation and give effect to such regulations no later than twenty-four months following the entry into force of this Agreement.

2. Each Party shall submit any legislation and issue any regulations necessary to carry out fully its obligations under Articles XIV, XV, XVIII, XIX and XXI no later than twenty-four months following the entry into force of this Agreement, and exert its best efforts to enact and implement such legislation and give effect to such regulations no later than thirty months following the entry into force of this Agreement.

3. Notwithstanding the time frames for implementation of the obligations of Articles XIII through XXI, as set forth in sections 1 and 2 above, each Party shall immediately comply to the extent possible under its laws, regulations and practice with the obligations set forth in such Articles, and shall at no time lessen its level of compliance with such obligations.

4. Notwithstanding any other provision of this Agreement, neither Party shall be obligated to comply with Article XII:1 unless and until such time as both Parties provide the level of protection required under Articles XIII through XXI and have exchanged written communications to that effect. The Parties may agree to be bound by their obligations under Article XII:1 on an Article-by-Article basis (for the Articles in the range of XIII through

XXI), as long as the communications referred to in this section have been exchanged for such individual Articles.

## CHAPTER III

### GENERAL ARTICLES

#### ARTICLE XXIII

##### DEFINITIONS

1. As used in Chapter I of this Agreement, the term set forth below shall have the following meaning:

A. "company," means any kind of:

- (1) corporation,
- (2) company,
- (3) association,
- (4) partnership,
- (5) sole proprietorship,
- (6) joint venture, or
- (7) other organization

whether or not organized for pecuniary gain, or privately or governmentally owned or controlled, and legally constituted under the laws and regulations of a Party or a political subdivision thereof;

B. "national," means a natural person who is a national of a Party under its applicable law.

2. As used in Chapter II of this Agreement, the terms below shall have the following meaning:

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

B. In respect of the relevant intellectual property rights, a "national" of a Party shall be understood as a natural or legal person that would meet the criteria for eligibility for protection provided for in the Paris Convention, the Berne Convention (1971), the Geneva Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, as if both were Parties to those conventions.

C. "Right Holder" means the right holder himself, any other natural or legal person authorized by him who is an exclusive licensee of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights.

D. "Integrated circuit" shall mean a product in which the elements are integrally formed in or on a piece of material which is intended to perform an electronic function.

E. "Encrypted program-carrying satellite signal" means a program-carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception of a program carried in that signal by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration;

F. With respect to the right in Chapter II, Article III, sections 2 and 8, to authorize or prohibit the communication of a work to the public, the term "communication to the public" shall include:

(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

(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 section 2 (A) above 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.

G. "Intellectual property rights" refer to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, rights in encrypted satellite signals, trade secret rights, and plant breeders rights.

H. "Confidential information" includes trade secrets, privileged information and other undisclosed information that has not become subject to an unrestricted public disclosure under the Party's domestic law.

I. "Lawful distributor" of an encrypted satellite signal means the person or legal entity holding the right to authorize the transmission of the program-carrying satellite signal to the general public or any section thereof in the territory of the Party.

J. "Person" means a national or a company (as defined in Article XXIII, section 1 (A) of this Agreement) of a Party.

K. "Public" includes, with respect to rights of communication and performance of works provided for under Articles 11, 11bis (l) and 14(l)(ii) of the Berne Convention, with respect to dramatic, dramatico-musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works.

## ARTICLE XXIV

### NATIONAL SECURITY

Nothing in this Agreement shall be construed:

1. to require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to essential security interests; or

2. to prevent either Party from taking any action which it considers necessary for the protection of its essential security interests:

A. relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapon or other nuclear explosive devices;

B. relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods, services, materials and technology undertaken as is carried on directly or indirectly for the purpose of supplying a military establishment;

C. taken in time of war or other emergency in international relations; or

3. to prevent either Party from taking any action in pursuit of its obligations under the United Nations Charter for the maintenance of international peace and security.

## ARTICLE XXV

### GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of measures:

a) necessary to secure compliance with laws or regulations not inconsistent with the provisions of this Agreement, including measures related to the protection of intellectual property rights and the prevention of deceptive practices, or

b) referred to in Article XX of the General Agreement on Tariffs and Trade (GATT).

2. Each Party reserves the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations.

3. Nothing in this Agreement limits the application of any existing or future agreement between the Parties on trade in textiles and textile products.

## ARTICLE XXVI

### CONSULTATIONS

The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

## ARTICLE XXV

### ENTRY INTO FORCE, DURATION, SUSPENSION AND TERMINATION

1. This Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments and shall remain in force for a period of ten years and shall continue thereafter unless terminated in accordance with paragraph 2 of this Article.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

IN WITNESS THEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, in duplicate, this fourth (4th) day of October, 1996, in the English and Khmer languages, each text being equally authentic; however, in the case of a divergence of interpretation, the English language text being the the text that shall prevail.

FOR THE UNITED STATES OF AMERICA:

/s/

Charlene Barshefsky

Acting United States Trade Representative

FOR THE KINGDOM OF CAMBODIA:

/s/

Cham Prasidh

Minister of Commerce