1509	**Olive oil and its fractions, whether or not refined, but not chemically modified**		
1509.10.00	- Virgin	5%	5%
1509.90	- Other:		
1509.90.10	- Refined	40%	30%
1510	**Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading No. 1519**		
1510.00.10	- Crude oils	5%	5%
	- Other:		
1510.00.91	- Refined	40%	30%
1511	**Palm oil and its fractions, whether or not refined, but not chemically modified**		
1511.10	- Crude oil		
1511.10.10	- Palm oil	5%	5%
1511.10.90	- Other	5%	5%
1511.90	- Other:		
1511.90.90	- Other	40%	30%
1512	**Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined but not chemically modified**		
	- Sunflower-seed or safflower oil and fractions thereof:		
1512.11.00	- Crude oil	5%	5%
1512.19	- Other		
1512.19.10	-Refined:	40%	30%

1513	**Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined but not chemically modified**		
	- Coconut (copra) oil and its fractions:		
1513.19	– Other:		
1513.19.10	- Refined	40%	30%
1514	**Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified**		
1514.10.00	- Crude oil	5%	5%
1514.90	- Other:		
1514.90.10	- Refined	40%	30%
1515	**Other fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified**		
1515.90	- Other:		
1515.90.99	- Other	40%	30%
1516	**Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared**		
1516.10.00	- Animal fats and oils and their fractions	40%	30%
1516.20.00	- Vegetable fats and oils and their fractions	40%	30%
1517	**Margarine; edible mistures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading**		
1517.10.00	- Margarine, excluding liquid margarine	40%	30%

1601	**Sausages and similar products, of meat, meat offal or blood; food preparations based on these products**	50%	40%*
1602	**Other prepared and preserved meat, meat offal or blood**		
1602.10.00	- Homogenized preparations	50%	40%*
1602.20.00	- Of liver of any animal	50%	40%*
	- Of poultry of heading No. 0105:		
1602-31.00	- Of turkeys	50%	40%*
1602.32.00	- Of fowls of the species Gallus domesticus	50%	40%*
1602.39.00	- Other	50%	40%*
	- Of swine:		
1602.41.00	- Hams and cuts thereof	50%	40%*
1602.42.00	- Shoulders and cuts thereof	50%	40%*
1602.49.00	- Other, including mixtures	50%	40%*
1602.50.00	- Of bovine animals	50%	40%*
1602.90.00	- Other , including preparations of blood of any animal	50%	40%*
1603.00.00	**Extracts and juices of meat, fish or crustaceans, molluscs or other aquatic invertebrates**	50%	30%
1604	**Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs**		
	- Fish, whole or in pieces, but not minced:		
1604.11.00	- Salmon	50%	40%
1604.12.00	- Herrings	50%	40%
1604.13.00	- Sardines, sardinella and brisling or sprats	50%	40%

1604.14.00	- Tunas, skipjack and bonito (Sarda spp.)	50%	40%
1604.15.00	- Mackerel	50%	40%
1604.16.00	- Anchovies	50%	40%
1604.19.00	- Other	50%	40%
1604.20.00	- Other prepared or preserved fish	50%	40%
1604.30.00	- Caviar and caviar substitutes	50%	40%
1605	**Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved**		
1605.10.00	- Crab	50%	40%
1605.20.00	- Shrimps and prawns	50%	40%
1605.30.00	- Lobster	50%	40%
1605.40.00	- Other crustaceans	50%	40%
1605.90.00	- Other	50%	40%
1806	**Chocolate and other food preparations containing cocoa**		
1806.10.00	- Cocoa powder, containing added sugar or other sweetening matter	30%	20%
1806.20.00	- Other preparations in blocks or slabs weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packing, of a content exceeding 2 kg	30%	20%
	- Other, in blocks, slabs or bars		
1902	**Pasta, whether or not cooked or stuffed (with meat or other substances or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared**		
	- Uncooked pasta, not stuffed or otherwise prepared:		
1902.11.00	- Containing eggs	50%	40%

1902.19.00	- Other	50%	40%
1902.20.00	- Stuffed pasta, whether or not cooked or otherwise prepared	50%	40%
1902.30.00	- Other pasta	50%	40%
1902.40.00	- Couscous	50%	40%
1903.00.00	**Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or in similar form**	50%	40%
2001	**Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid**		
2001.10.00	- Cucumbers and gherkins	50%	40%
2001.20.00	- Onions	50%	40%
2001.90.00	- Other	50%	40%
2002	**Tomatoes prepared or preserved otherwise than by vinegar or acetic acid**		
2002.10.00	- Tomatoes, whole or in pieces	50%	40%
2002.90	- Other:		
2002.90.10	- Tomato paste	50%	40%
2002.90.90	- Other	50%	40%
2003	**Mushroom and truffles, prepared or preserved otherwise than by vinegar or acetic acid**		
2003.10.00	- Mushrooms	50%	40%
2003.20.00	- Truffles	50%	40%
2004	**Other vegetables, prepared or preserved otherwise than by vinegar or acetic acid, frozen other than**		

	products of heading No. 2006		
2004.10.00	- Potatoes	50%	40%
2004.90.00	- Other vegetables and mixtures of vegetables	50%	40%
2005	**Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No. 20.06**		
2005.10.00	- Homogenized vegetables	50%	40%
2006	**Vegetables, fruit, nuts, fruit-peel and other parts of plants, preserved by sugar (drained, glace or crystallised)**		
2006.00.10	- Fruits or nuts	50%	40%
2006.00.90	- Other	50%	40%
2007	**Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter**		
2007.10.00	- Homogenized preparation	50%	40%
	- Other:		
2007.91.00	- Citrus fruit	50%	40%
2007.99.00	- Other	50%	40%
2008	**Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included**		
	- Nuts, ground-nuts and other seeds, whether or not mixed together:		
2008.11	- Ground nut:		
2008.11.10	- Oil-roasted and the like	50%	40%

2008.11.20	- Coated with sugar	50%	40%
2008.11.90	- Other	50%	40%
2008.19	- Other, including mixtures		
2008.19.10	- Prepared cashew	50%	40%
2008.19.90	- Other	50%	40%
2008.20.00	- Pineapples	50%	40%
2008.30.00	- Citrus fruit	50%	40%
2008.40.00	- Pears	50%	40%
2008.50.00	- Apricots	50%	40%
2008.60.00	- Cherries	50%	40%
2008.70.00	- Raspberries	50%	40%
2008.80.00	- Strawberries	50%	40%
	- Other, including mixtures other than those of subheading No. 2008.19:		
2008.91.00	- Palm hearts	50%	40%
2008.92.00	- Mixtures	50%	40%
2008.99.00	- Other	50%	40%
2009	**Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter**		
	- Orange juice:		
2009.11.00	- Frozen	50%	40%
2009.19.00	- Other	50%	40%
2009.20.00	- Grapefruit juice	50%	40%
2009.30.00	- Juice of any other single citrus fruit	50%	40%
2009.40.00	- Pineapple juice	50%	40%
2009.50.00	- Tomatoes juice	50%	40%
2009.60.00	- Grape juice (including grape must)	50%	40%
2009.70.00	- Apple juice	50%	40%
2009.80.00	- Juice of any other fruit or vegetable	50%	40%

2009.90.00	- Mixtures of juices	50%	40%
2201	**Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured; ice and snow**		
2201.90.00	- Other	50%	40%
2202	**Waters, including mineral waters and aerated water containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading No. 2009**		
2202.10	- Waters, including mineral waters and aerates waters, containing added sugar or other sweetening matter or flavoured:		
2202.10.10	- Beverages, flavoved with fruit juices or essences (orangeade, lemonade, strawberrade...)	50%	40%
2202.10.20	- Cola waters and the like	50%	40%
2202.10.90	- Other	50%	40%
2202.90.00	- Other	50%	40%
2203.00.00	**Beer made from malt**	100%	80%
2207	**Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher; ethyl alcohol or other spirits, denatured, of any strength**		
2207.10.00	- Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher	50%	40%
2207.20	- Ethyl alcohol or other spirits, denatured, of any strength:		

2207.20.90	- Other	50%	40%
2209.00.00	**Vinegar and substitutes for vinegar obtained from acetic acid**	50%	20%
2304.00.00	**Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil.**	10%	10%
2309	**Preparations of a kind used in animal feeding**		
2309.10.00	- Dog or cat food, put up for retail sale	10%	10%
2309.90	- Other:		
2309.90.10	- Shrimp food	10%	10%

Tariffs on Industrial Products - Vietnam

HS Number	Product Description	Current Tariffs *(ad valorem)*	Tariffs to be Implemented three years after the date of entry into force of this Agreement *(ad valorem)*
33030000	Perfumes and toilet waters	50	30
3304	**Beauty or make-up preparations and preparations for care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations**		
33043000	- Manicure or pedicure preparations	50	30
	- Other:		
33049900	- Other	50	30

3305	**Preparations for use on the hair**		
33051000	- Shampoos	50	40
33053000	- Hair lacquers	50	30
330590	- Other:		
33059010	- Hair dyes	50	30
33059090	- Other	50	30
3401	**Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; paper, wadding, felt, and nonwovens, impregnated, coated or covered with soap or detergent**		
34012000	-Soap in other form (soap noodles only)	50	30
3402	**Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading No. 34.01**		
340290	- Other:		
34029090	- Other (surfactant for hair care only)	20	10
3701	**Photographic plates and film in the flat, sensitized, unexposed, of any materials other than paper, paperboard or textiles; instant print film in the flat, sensitized, unexposed, whether or not in packs**		
37013000	-Other plated and film, with any side exceeding 255 mm	15	10
3702	**Photographic film in rolls, sensitized, unexposed; of any materials other than paper, paperboard or textiles, instant print film inrolls, sensitized, unexposed**		
37023100	- for colour photography (polychrome)	30	20
	- Other film, for color photography (polychrome)		
37025400	- Of a width exceeding 16 mm but not exceeding 35 mm and of a length not exceeding 30 m, excl.	30	20

	for slides		
37025500	- Of a width exceeding 16 mm but not exceeding 35 mm and of a length exceeding 30 m	30	20
37025600	- Of a width exceeding 35mm	30	20
3703	**Photographic paper, paperboard and textiles, sensitized, unexposed**		
37032000	-Other, for colour photography (polychrome)	30	20
4804	**Uncoated kraft paper and paperboard, in rolls or sheets, other than that of heading No. 48.02 or 48.03**		
	- Kraftliner:		
48041100	– Unbleached	30	20
6406	**Parts of footwear; removable in-soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts therof**		
64069900	– Of other materials	20	10
7323	**Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel**		
73239900	--Other	30	20
8408	**Compression-ignition internal combustion piston engines (diesel, semi-diesel)**		
840820	- Engines of a kind used for propulsion of vehicles of Chapter 87		
	– For other vehicles of Chapter 87		
84082021	– For motor vehicles of sub-heading No. 8711, 8703	40	30
8415	**Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity can not be separately regulated**		
841583	- Not incorporating a refrigerating unit		
84158310	- Of a capacity not excceding 90,000BTU/h	50	30
84158320	-Of a capacity exceeding 90,000BTU/h but not exceeding 180,000 BTU/h	40	30

84158390	-Other	30	20
841590	-Parts:		
84159019	- Other	30	20
8418	**Refrigerators, freezers and other refrigerating of freezing equipment, electric or other; heat pumps other than air conditioning machines of heading No. 84.15**		
841830	-Freezers if the chest type, not exceeding 800 l capacity :		
84183010	- With capacity not exceeding 200 1	50	30
84183090	- With capacity exceeding 200 1 but not exceeding 800 1	30	20
841840	-Freezers of the upright type, not exceeding 900 l capacity:		
84184010	- With capacity not exceeding 200 1	50	40
84184090	- With capacity exceeding 200 1 but not exceeding 900 1	30	20
841850	-Other refrigerating or freezing chests, cabinets, display counters, show cases and similar refrigerating or freezing furniture:		
84185010	- With capacity not exceeding 200 1	50	40
84185090	- With capacity exceeding 200 1	30	20
8419	**Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, 'distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instanteous or storage water heaters, non-electric**		
	- Other machinery, plant and equipment:		
84198100	-For making hot drinks or for cooking or heating food	30	20
8421	**Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus for liquids or gases.**		
842121	-For filtering or purifying water		

84212110	-Electrical operated with filtering capacity not exceeding 500 1/h	20	15
8450	**Household or laundry-type washing machines, including machines which both wash and dry**		
	- Machines, each of a dry linen capacity not exceeding 10 kg:		
84501100	-Fully-automatic machines	50	40
84501200	-Other machines, with built-in centrifugal drier	50	40
84501900	-Other	50	40
84502000	-Machines, each of a dry linen capacity exceeding 10 kg:	50	40
84509000	-Parts	50	40
8481	**Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves**		
848180	-Other appliances:		
84818060	-Valves for water pipe	20	15
8508	**Electro-mechanical tools for working in the hand, with self-contained electric motor.**		
85081000	-Drills of all kinds	10	5
8516	**Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair dressing apparatus (for example, 'hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading No. 8545**		
851660	-Other ovens; cookers, cooking plates, boiling rings, grillers and roasters		
85166020	-Boilers including boiling rings	40	30
85166030	-Ovens cooker	40	30
85166090	-Other	40	30
8523	Prepared unrecorded media for sound recording or similar recording of other		

	phenomena, other than products of Chapter 37		
852313	-Of a width exceeding 6.5 mm:		
85231320	-Computer magnetic tapes	20	15
8525	**Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing.**		
852520	-Transmission apparatus incorporating reception apparatus:		
85252010	-Cordless telephones (mobile phones)	20	10
85254000	-Still image video cameras and other video camera recorders	30	20
8527	**Reception apparatus for radio-telephony, radio-telegraphy or radio broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock**		
852790	-Other		
85279010	-Pager	15	10
8529	**Parts suitable for use soley or principally with the apparatus of headings Nos. 85.25 tp 85.28**		
85291000		30	20
9006	**Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading No. 8539**		
90065300	-Other, for roll film of a width of 35 mm	30	20
9504	**Articles for funfair, table or parlour games, including pintables, billards, special tables for casino games and automatic bowling alley equipment**		
95041000	-Video games of a kind used with a television receiver	50	30
95049000	-Other	50	30

CHAPTER II

INTELLECTUAL PROPERTY RIGHTS

Article 1
Objectives, Principles and Scope of Obligations

1. Each Party shall provide in its territory to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights.

2. The Parties recognize the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives, and ensure that measures to protect and enforce intellectual property rights do not themselves become barriers to legitimate trade.

3. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Chapter and the substantive economic provisions of:

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

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

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

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

   E. the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974).

   If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall promptly make every effort to accede.

4. A Party may implement in its domestic law more extensive protection and enforcement of intellectual property rights than is required under this Chapter, provided that such protection and enforcement are not inconsistent with this Chapter.

Article 2
Definitions

For purposes of this Chapter:

1. "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.

2. "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.

3. "intellectual property rights" refers to copyrights and related rights, trademarks, patents, layout designs (topographies) of integrated circuits, encrypted program-carrying satellite signals, confidential information (trade secrets), industrial designs and rights in plant varieties.

4. "lawful distributor of an encrypted satellite signal" in a Party means the person who originally transmitted the signal.

5. "national" of a Party shall, in respect of the relevant intellectual property rights, be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention, the Berne Convention, the Geneva Convention, the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the UPOV Convention (1978), the UPOV Convention (1991) or the Treaty on Intellectual Property in Respect of Integrated Circuits adopted at Washington in 1989, as if each Party were a Party to those Conventions, and with respect to intellectual property rights that are not the subject of these Conventions, "national of a Party" shall be understood at least to include any person that is a citizen or permanent resident of that Party.

6. "public" includes, with respect to rights of communication and performance of works provided for under Articles 11, 11*bis*(1) and 14(1)(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.

7. "right holder" includes the right holder personally, any other natural or legal person authorized by the right holder 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.

Article 3
National Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favorable than it accords to its own nationals with regard to the acquisition, protection, enjoyment and enforcement of all intellectual property rights and any benefits derived therefrom.

2. A Party shall not, 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 paragraph 1 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 1.3 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 4
Copyright and Related Rights

1. Each Party shall protect all works that embody original expression within the meaning of the Berne Convention. In particular:

A. all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them 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 works.

The protection a Party provides under subparagraph (B) 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 paragraph 1, and shall provide the right to authorize or prohibit:

A. the importation into the Party's territory of copies of the work;

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 the purposes of commercial advantage.

Subparagraph (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 not exhaust the rental right.

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

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

B. any person acquiring or holding any 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. Each Party shall provide that, where the term of protection of a work is to be calculated on a basis other than the life of a natural person, the term shall be not less than 75 years from the end of the calendar year of the first authorized publication of the work or, failing such

authorized publication within 25 years from the creation of the work, not less than 100 years from the end of the calendar year of the creation of the work.

5. Neither Party may grant translation or reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.

6. 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;

   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 or a copy of the sound recording for the purposes of 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.

7. Each Party shall provide to performers the right to authorize or prohibit:

   A. the fixation of their live musical performances in a sound recording;

   B. the reproduction of unauthorized fixations of their live musical performances in a sound recording;

   C. the transmission or other communication to the public of sounds in a live musical performance; and

   D. the distribution, sale, rental, disposal or transfer of the unauthorized fixations of their live performances in a sound recording, regardless of where the fixations were made.

8. Each Party shall, through operation of this Agreement, apply the provisions of Article 18 of the Berne Convention to works and, with such modifications as may be necessary, to existing sound recordings.

9. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work, and do not unreasonably prejudice the legitimate interests of the right holder.

Article 5
Protection of Encrypted Program-Carrying Satellite Signals

1. For serious violations involving the protection of encrypted program-carrying satellite signals, each Party shall make available appropriate remedies, including civil and criminal remedies.

2. Serious violations involving the protection of encrypted program-carrying satellite signals shall include the following:

   A. The manufacture, assembly, modification, or distribution (including import, export, sale or lease) of a device or system, by any person knowing or having reason to know that the device or system is primarily of assistance in the unauthorized decoding of an encrypted program-carrying satellite signal; and

   B. The willful receipt or further distribution of an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal (regardless of the location of such person) or of any other person or persons designated by the original transmitter as authorized distributors of such signal in such Party.

3. Each Party shall provide that civil remedies provided for pursuant to paragraph 1 of this Article shall be available to any person that holds an interest in the encrypted program-carrying satellite signal or the content thereof.

Article 6
Trademarks

1. For the 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, combinations of 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 making rights available on the basis of use.

3. 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.

4. Each Party shall provide a system for the registration of trademarks, which shall include:

   A. examination of applications;

   B. notice to be given to an applicant of the reasons for the refusal to register a trademark;

   C. a reasonable opportunity for the applicant to respond to the notice;

   D. publication of each trademark either before or promptly after it is registered; and

   E. a reasonable opportunity for interested persons to petition to cancel the registration of a trademark.

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

6. Article 6*bis* of the Paris Convention shall apply, with such modifications as may be 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.

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

8. Each Party shall provide that the initial registration of a trademark be for a term of at least 10 years, and that the registration be indefinitely renewable for terms of not less than 10 years when conditions for renewal have been met.

9. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled for the reason of non-use only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. The law shall recognize, as valid reasons for non-use, circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.

10. Each Party shall recognize the use of a trademark by a person other than the trademark owner, where such use is subject to the owner's control, as use of the trademark for purposes of maintaining the registration.

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

12. A Party may determine conditions on the licensing and assignment of trademarks, it being understood that the 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 a transfer of goodwill in a mark as part of a valid transfer of the mark.

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

14. A Party may 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 disrepute. 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.

Article 7
Patents

1. Subject to the provision of paragraph 2 of this Article, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that such invention is new, resulted from an inventive step and is capable of industrial application. For purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively.

2. Parties may exclude from patentability:

   A. inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law;

   B. diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

   C. essentially biological processes for the production of plants or animals other than non-biological and microbiological processes; animal varieties; plant varieties. The exclusion for plant varieties is limited to those plant varieties that satisfy the definition provided in Article 1(vi) of the UPOV Convention (1991); such definition shall apply *mutatis mutandis* to animal varieties. The exclusions for plant and animal varieties shall not apply to plant or animal inventions that could encompass more than one variety. Moreover, the Parties shall provide for the protection of plant varieties by an effective *sui generis* system in accordance with subparagraph 3.D of Article 1 of this Chapter.

3. Each Party shall provide that:

   A. where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using, selling, offering for sale or importing for these purposes the subject matter of the patent, without the patent owner's consent; and

   B. where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, offering for sale or importing for these purposes at least the product obtained directly by that process, without the patent owner's consent.

4. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner.

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

6. A Party may revoke a patent only when grounds exist that would have justified a refusal to grant the patent.

7. Each Party shall permit patent owners to assign and transfer by succession their patents, and to conclude licensing contracts.

8. A Party may decline to allow use without the authorization of the right holder of a patent. However, where the law of a Party allows for use of the subject matter of a patent, other than use allowed under paragraph 4, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:

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

   B. such use may be permitted only 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 semiconductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

   D. such use shall be non-exclusive;

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

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

   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 that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, on petition of an interested party, 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 authorization shall be subject to judicial or other independent review by a distinct higher authority;

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

K. the Party shall not be obliged to apply the conditions set out in subparagraphs B and F of this Article where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. 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 that led to such authorization are likely to recur; and

L. the Party shall not 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.

9. Where the subject matter of a patent is a process for obtaining a product, each Party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process in one or more of the following situations:

A. the product obtained by the patented process is new; or

B. a substantial likelihood exists that the allegedly infringing 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, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.

10. Each Party shall provide a term of protection for patents that shall not end before the expiration of a period of twenty years counted from the date of filing. A Party may extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

Article 8
Layout Designs (Topographies) of 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 provisions of paragraphs 2 through 8 of this Article.

2. Subject to paragraph 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 paragraph 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 paragraph 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. Any Party that requires registration as a condition for protection of a layout design shall provide that the term of protection shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the date on which the layout design is first commercially exploited in the world, whichever occurs first.

7. Where a Party does not require registration as a condition for protection of a layout design, the Party shall provide a term of protection of not less than 10 years from the date of the first commercial exploitation of the layout design, wherever in the world it occurs.

8. Notwithstanding paragraphs 6 and 7, a Party may provide that the protection shall lapse 15 years after the creation of the layout design.

Article 9
Confidential Information (Trade Secrets)

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), each Party shall protect confidential information in accordance with paragraph 2 below and data submitted to government or governmental agencies in accordance with paragraphs 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 or readily ascertainable;

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

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

5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agrochemical products, the submission of undisclosed test or other data, the origination of which involves a considerable effort, the Party shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public.

6. Each Party shall provide that for data of a type referenced in paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no other applicant for product approval may, without permission of the person that submitted them, rely on that data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that

produced the data for approval to market its product, taking into account the nature of the data and the person's efforts and expenditures in producing them.

Article 10
Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that:

   A. designs are not new or original if they do not significantly differ from known designs or combinations of known design features; and

   B. such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Party shall ensure that the requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair a person's opportunity to seek and obtain such protection. A Party may comply with this obligation through industrial design law or copyright law.

3. Each Party shall provide the owner of a protected industrial design the right to prevent other persons not having the owner's consent from making, selling, importing or otherwise distributing articles bearing or embodying a design that is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

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

5. Each Party shall provide a term of protection for industrial designs available for the amount of at least 10 years.

Article 11
Enforcement of Intellectual Property Rights

1. As specified in this Article and Articles 12 through 15 hereof, each Party shall provide procedures in its domestic law that permit effective action against infringement of the intellectual property rights covered by this Chapter. These procedures shall include expeditious remedies to prevent infringement and remedies substantial enough to deter

future infringement. Each Party shall apply enforcement procedures in a manner that does not create barriers to legitimate trade and contains effective safeguards against abuse.

2. Each Party shall ensure that its enforcement procedures are fair and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable time limits or unwarranted delays.

3. Each Party shall ensure that decisions on the merits of a case in judicial and administrative enforcement proceedings are:

   A. in writing and state the reasons on which the decisions are based;

   B. made available without undue delay at least to the parties in a proceeding; and

   C. based only on evidence in respect of which such parties were offered the opportunity to be heard.

4. Each Party shall ensure that parties in a proceeding have an opportunity to have final administrative decisions reviewed by a judicial authority of that Party and, subject to jurisdictional provisions in its domestic laws concerning the importance of a case, to have reviewed at least the legal aspects of initial judicial decisions on the merits of a case. Notwithstanding the above, neither Party shall be required to provide for judicial review of acquittals in criminal cases.

Article 12
Specific Procedural and Remedial Aspects of Civil and Administrative Procedures

1. Each Party shall make available to right holders civil judicial procedures for the enforcement of any intellectual property right covered by this Agreement. Each Party shall provide that:

   A. defendants have the right to written notice that is timely and contains sufficient detail, including the basis of the claims;

   B. parties in a proceeding are allowed to be represented by independent legal counsel;

   C. enforcement procedures do not include imposition of overly burdensome requirements concerning mandatory personal appearances;

   D. all parties in a proceeding are duly entitled to substantiate their claims and to present relevant evidence; and

E. the procedures include a means to identify and protect confidential information.

2. Each Party shall authorize its judicial authorities:

A. where a party in a proceeding has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to the substantiation of its claims that is within the control of the opposing party, to order the opposing party to produce such evidence, subject in appropriate cases to conditions that ensure the protection of confidential information;

B. where a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under that party's control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, to make preliminary and final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence;

C. to order a party in a proceeding to desist from an infringement, including measures to prevent the entry into the channels of commerce of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods.

D. to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement and the profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages;

E. to order an infringer of an intellectual property right to pay the right holder's expenses, which may include appropriate attorney's fees; and

F. to order a party in a proceeding at whose request measures were taken and who has abused enforcement procedures to provide adequate compensation to any party wrongfully enjoined or restrained in the proceeding for the injury suffered because of such abuse and to pay that party's expenses, which may include appropriate attorney's fees.

3. With respect to the authority referred to in subparagraph 2.D, a Party shall, at least with respect to works protected by copyright or neighboring rights, provide judicial authorities with the authority to order the payment of pre-established damages. Judicial authorities shall exercise such authority at their discretion.

4. Each Party shall, in order to create an effective deterrent to infringement and counterfeiting, authorize its judicial authorities to order that:

   A. goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any injury caused to the right holder or, unless this would be contrary to existing constitutional requirements, destroyed; and

   B. 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 whether to issue such an order, judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of other persons. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

5. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, each Party may exempt public authorities and officials from liability, unless their actions were not taken or intended in good faith in the course of the administration of such laws.

6. Notwithstanding the other provisions of Articles 11 through 15 of this Chapter, in any case of infringement of an intellectual property right brought against a Party to this Agreement, remedies available against that Party may be limited to the payment to the right holder of adequate remuneration in the circumstances of each case, taking into account the economic value of the use.

7. Each Party shall provide that, where a civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 13
Provisional Measures

1. Each Party shall authorize its judicial authorities to order prompt and effective provisional measures:

   A. to prevent an infringement of any intellectual property right, and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly

infringing goods, including imported goods immediately after customs clearance; and

B. to preserve relevant evidence in regard to the alleged infringement.

2. Each Party shall authorize its judicial authorities to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that the judicial authorities consider necessary to enable them to determine with a sufficient degree of certainty whether:

A. the applicant is the right holder;

B. the applicant's right is being infringed or such infringement is imminent; and

C. any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed.

Each Party shall authorize its judicial authorities to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.

3. Each Party shall authorize its judicial authorities to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.

4. Each Party shall authorize its judicial authorities to order 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.

5. Each Party shall authorize that where provisional measures are adopted by that Party's judicial authorities on an *ex parte* basis:

A. a person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures;

B. a defendant shall, on request, have those measures reviewed by that Party's judicial authorities for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed, and shall be given an opportunity to be heard in the review proceedings.

6. Without prejudice to paragraph 5, each Party shall provide that, on the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the

provisional measures taken on the basis of paragraphs 1 and 4 if proceedings leading to a decision on the merits are not initiated:

A. within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or

B. in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.

7. Each Party shall authorize its judicial authorities to order, on request of the defendant, that the applicant provide compensation for injury caused by provisional measures:

A. if the provisional measures are revoked or lapse because of any act or omission of the applicant, or

B. if the judicial authorities subsequently find there has been no infringement or threat of infringement of any intellectual property right.

8. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 14
Criminal Procedures and Penalties

1. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or infringement of copyrights or neighboring rights on a commercial scale. Each Party shall provide that penalties available include imprisonment or monetary fines, or both, sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.

2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.

3. Each Party may provide that, in appropriate cases, its judicial authorities may impose criminal penalties for the infringement of intellectual property rights other than those in paragraph 1 of this Article, where they are committed wilfully and on a commercial scale.

Article 15
Enforcement of Intellectual Property Rights 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 works protected by copyrights or neighboring rights 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 paragraph 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 paragraph 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, 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 paragraphs 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 paragraph 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 paragraph 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 paragraphs 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, Article 13.6 of this Chapter shall apply.

9. Each Party shall ensure that its competent authorities have the authority to order the applicant under paragraph 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 paragraph 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 paragraphs 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 Article 12.4 of this Chapter. In regard to counterfeit trademark 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 paragraphs 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 16
Existing Subject Matter

To the extent this Agreement requires a Party to increase its level of protection and enforcement of intellectual property rights, it gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Party in question, and which is protected in that Party on the date the Agreement enters into force, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this Article, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971), which is applied with such modifications as may be necessary.

Article 17
Technical Cooperation

1. The Parties agree to enhance mutually beneficial cooperation in the field of intellectual property rights. To this end, the United States agrees to provide Vietnam with technical assistance to strengthen its regime for the protection and enforcement of intellectual property rights. Such technical assistance shall be provided on mutually agreed terms and is subject to the availability of appropriated funds. This assistance may be provided through, or in conjunction with, private industry or international organizations.

2. Cooperative activities under this Article may be undertaken in the fields of intellectual property described in Article 2.3 of this Chapter as well as the enforcement of intellectual property rights. Cooperative activities under this Article may include, but are not limited to, such activities as the exchange of experience and training of staff, and have the aim of strengthening the legislative and regulatory framework in the field of intellectual property law, strengthening the administration of intellectual property protection, and strengthening the implementation and effective enforcement of intellectual property laws in Vietnam.

3. To assist in further strengthening its regime for the protection and enforcement of intellectual property rights, Vietnam agrees to seek appropriate technical assistance from relevant international organizations or other interested countries, organizations or agencies.

Article 18
Transitional Provisions

1. Vietnam agrees to implement fully the obligations of this Chapter within the following time periods:

   A. With respect to all obligations in Articles 6 and 7, twelve months from the date of entry into force of this Agreement.

   B. With respect to all obligations in Article 4 except the obligation in Article 4.4, and with respect to all obligations in Article 9, eighteen months from the date of entry into force of this Agreement.

   C. With respect to the obligations in Articles 1.3.A, 1.3.E, 4.4 and 5, thirty months from the date of entry into force of this Agreement.

   D. With respect to all obligations not referenced in sub-paragraphs 1.A, 1.B or 1.C of this Article, twenty-four months from the date of entry into force of this Agreement.

2. The United States agrees to implement fully the obligations of this Chapter upon entry into force of this Agreement, with the exception of the obligations in Article 8 and Article 3.1 as regards the protection of layout designs (topographies) of integrated circuits, which shall be implemented twenty-four months from the date of entry into force of this Agreement.

3. Vietnam shall comply fully with the obligations of this Chapter which coincide with those of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) upon its accession to the WTO, if such accession occurs before the expiration of the time periods provided in paragraph 1 of this Article.

4. Each Party shall immediately comply with the obligations of this Chapter to the extent possible under its existing laws, and shall not take any measures during the time periods provided in paragraphs 1 and 2 that would result in a lesser degree of consistency with this Chapter.

5. In case of any conflict between the provisions of this Agreement and The Agreement between the Government of the United States of America and the Government of the Socialist Republic of Vietnam on the Establishment of Copyright Relations, signed in Hanoi on June 27, 1997, the provisions of this Agreement shall prevail to the extent of the conflict.

CHAPTER III

TRADE IN SERVICES

Article 1
Scope and Definition

1. This Chapter applies to measures by the Parties affecting trade in services.

2. For the purposes of this Chapter, trade in services is defined as the supply of a service:

   A. from the territory of one Party into the territory of the other Party;

   B. in the territory of one Party to the service consumer of the other Party;

   C. by a service supplier of one Party, through commercial presence in the territory of the other Party;

   D. by a service supplier of one Party, through presence of natural persons of a Party in the territory of the other Party.

3. For the purposes of this Chapter:

   A. "measures by a Party" means measures taken by:

      (i) central, regional or local governments and authorities; and

      (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

   In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

   B. "services" includes any service in any sector except services supplied in the exercise of governmental authority;

   C. "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

Article 2
Most-Favored-Nation Treatment

1. With respect to any measure covered by this Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of the other Party treatment no less favorable than that it accords to like services and service suppliers of any other country.

2. A Party may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in Listing of Article 2 Exemptions in Annex G.

3. The provisions of this Chapter shall not be so construed as to prevent either Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article 3
Economic Integration

1. This Chapter shall not apply to advantages accorded by either Party by virtue of such Party's membership in, or having entered into, an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

   A. has substantial sectoral coverage,[2] and

   B. provides for the absence or elimination of substantially all discrimination, in the sense of Article 7, between or among the parties, in the sectors covered under subparagraph (A), through:
      i) elimination of existing discriminatory measures, and/or
      ii) prohibition of new or more discriminatory measures,
      either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles 1, 2, and 3 of Chapter VII.

2. A service supplier of any Party that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

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[2] This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

Article 4
Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. A. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

   B. The provisions of subparagraph A shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

4. A. The Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

   (i) does not comply with the following criteria:

      (a) such requirements or standards shall be based on objective and transparent criteria, such as competence and the ability to supply the service;

      (b) such requirements or standards shall not be more burdensome than necessary to ensure the quality of the service;

      (c) in the case of licensing procedures, they shall not in themselves be a restriction on the supply of the service.

(ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

B. In determining whether a Party is in conformity with the obligation under sub-paragraph 4.A, account shall be taken of international standards of relevant international organizations[3] applied by that Party.

5. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

Article 5
Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 2 and specific commitments.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect, (*a*) authorizes or establishes a small number of service suppliers and (*b*) substantially prevents competition among those suppliers in its territory.

[3] The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

Article 6
Market Access

1. With respect to market access through the modes of supply identified in Article 1, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule in Annex G.[4]

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

   A. limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

   B. limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

   C. limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[5]

   D. limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

   E. measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

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[4] If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(A) of Article 1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(C) of Article 1, it is thereby committed to allow related transfers of capital into its territory.

[5] Subparagraph 2(C) does not cover measures of a Party which limit inputs for the supply of services.

F. limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 7
National Treatment

1. In the sectors inscribed in its Schedule in Annex G, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.[6]

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

Article 8
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 6 or 7, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 9
Schedules of Specific Commitments

1. Each Party shall set out in Annex G the specific commitments it undertakes under Articles 6 and 7 of this Chapter. With respect to sectors where such commitments are undertaken, such Annex shall specify:

   A. terms, limitations and conditions on market access;

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[6] Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service supplier.

B. conditions and qualifications on national treatment;

C. undertakings relating to additional commitments;

D. where appropriate the time-frame for implementation of such commitments; and

E. the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 6 and 7 shall be inscribed in the column relating to Article 6. In this case the inscription will be considered to provide a condition or qualification to Article 7 as well.

3. Schedules of specific commitments shall be annexed to this Chapter and shall form an integral part thereof.

Article 10
Denial of Benefits

A Party may deny the benefits of this Chapter:

1. to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party;

2. in the case of the supply of a maritime transport service, if applicable, if it establishes that the service is supplied:

   A. by a vessel registered under the laws of a non-Party, and

   B. by a person which operates and/or uses the vessel in whole or in part but which is of a non-Party;

3. to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party.

Article 11
Definitions

For the purpose of this Chapter and Annex G:

1. "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

2. "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

3. "measures by a Party affecting trade in services" include measures in respect of

   A. the purchase, payment or use of a service;

   B. the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;

   C. the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;

4. "commercial presence" means any type of business or professional establishment, including through

   A. the constitution, acquisition or maintenance of a juridical person, or

   B. the creation or maintenance of a branch or a representative office,

   within the territory of a Party for the purpose of supplying a service;

5. "sector" of a service means,

   A. with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,

   B. otherwise, the whole of that service sector, including all of its subsectors;

6. "service of the other Party" means a service which is supplied,

   A. from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

   B. in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

7. "service supplier" means any person that supplies a service;[7]

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[7] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical

8. "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;

9. "service consumer" means any person that receives or uses a service;

10. "person" means either a natural person or a juridical person;

11. "natural person of the other Party" means a natural person who resides in the territory of that other Party, and who under the law of that other Party:

    A. is a national of that other Party; or

    B. has the right of permanent residence in that other Party, in the case of a Party which:

        i) does not have nationals; or

        ii) accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services;

12. "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

13. "juridical person of the other Party" means a juridical person which is either:

    A. constituted or otherwise organized under the law of the other Party, and is engaged in substantive business operations in the territory of that Party; or

    B. in the case of the supply of a service through commercial presence, owned or controlled by:

        i) natural persons of that Party; or

        ii) juridical persons of that other Party identified under subparagraph (i);

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person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

14. a juridical person is:

    A. "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

    B. "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

    C. "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

15. "company" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other organization;

16. "enterprise" means a company.

ANNEX F

ANNEX ON FINANCIAL SERVICES, ANNEX ON MOVEMENT OF NATURAL PERSONS, ANNEX ON TELECOMMUNICATIONS, AND TELECOMMUNICATIONS REFERENCE PAPER

Annex on Financial Services

The Parties agree that the Annex on Financial Services to the WTO Agreement on Trade in Services (GATS) is hereby incorporated into this Agreement by reference, ***mutatis mutandis***, as if its provisions were fully set forth herein, with the exceptions of Paragraph 3 and Paragraph 4 of such Annex which shall not be so incorporated.

For greater clarity, the Parties understand that:

1. References in the Annex on Financial Services to the GATS to "Member" and "Members" shall mean "Party" and "Parties," respectively, in this Agreement; and
2. References in the Annex on Financial Services to the GATS to Article 1 of the GATS shall mean Article 1 of Chapter III of this Agreement.

Annex on Movement of Natural Persons

The Parties agree that the Annex on the Movement of Natural Persons to the WTO Agreement on Trade in Services (GATS) is hereby incorporated into this Agreement by reference, *mutatis mutandis*, as if its provisions were fully set forth herein.

For greater clarity, the Parties understand that:

1. References in the Annex on the Movement of Natural Persons to the GATS to "Member" and "Members" shall mean "Party" and "Parties," respectively, in this Agreement;
2. References in the Annex on the Movement of Natural Persons to the GATS to the "Agreement" shall mean Chapter III of this Agreement; and
3. References in the Annex on the Movement of Natural Persons to the GATS to "Parts III and IV of the Agreement" shall mean Articles 5, 6, 7 and 8 of Chapter III of this Agreement.

Annex on Telecommunications

The Parties agree that the Annex on Telecommunications to the WTO Agreement on Trade in Services (GATS) is hereby incorporated into this Agreement by reference, *mutatis mutandis*, as if its provisions were fully set forth herein, with the exceptions of Paragraph 6 and Paragraph 7 of such Annex which shall not be so incorporated.

For greater clarity, the Parties understand that references in the Annex on Telecommunications to the GATS to "Member" and "Members" shall mean "Party" and "Parties," respectively, in this Agreement.

Telecommunications Reference Paper

The Parties agree that the Telecommunications Reference Paper ("Reference Paper") to the WTO Agreement on Trade in Services (GATS), as contained in the attachment to WTO document GATS/SC/90/Suppl.2, is hereby incorporated into this Agreement by reference, *mutatis mutandis*, as if its provisions were fully set forth herein.

For greater clarity, the Parties understand that references in such Reference Paper to "Member" and "Members" shall mean "Party" and "Parties," respectively, in this Agreement.