

## AGREEMENT CONCERNING THE PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAMAICA

The Government of the United States of America and the Government of Jamaica (hereinafter referred to collectively as "Parties" and individually as "Party"), to promote close and productive economic, cultural and other relations and desiring to facilitate the expansion of trade on a non-discriminatory basis, agree to provide adequate and effective protection and enforcement of intellectual property rights and to ensure that measures to enforce such rights do not themselves become barriers to legitimate trade, as set forth in this Agreement.

### Article One Nature and Scope of Obligations

1. Each Party agrees to provide in accordance with provisions of this Agreement adequate and effective protection and enforcement of intellectual property rights in patents, trademarks, copyrights, trade secrets, and layout designs for integrated circuits.

2. Each Party shall, at a minimum, and without prejudice to its right to provide more comprehensive protection,

a. Adhere to and implement at national law the obligations of:

i. the Paris Convention for the Protection of Industrial Property (Stockholm, 1967) ("Paris Convention");

ii. the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971) ("Berne Convention"). However, the Parties shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of the Berne Convention or of any rights derived therefrom;

iii. the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized duplication of their Phonograms (1971);

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

b. 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 make every effort to accede.

c. Observe the following provisions.

### Article Two National Treatment

Each Party shall provide no less favorable treatment to nationals of the other Party than it provides to its own nationals with respect to laws, regulations and practices implementing the provisions of this Agreement.

### Article Three More Extensive Protection

The Parties may implement in their domestic law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement.

### Article Four Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works, now known or later developed, which embody original expression within the meaning of Article 2 of the Berne Convention. For example:

a. all types of computer programs are literary works within the meaning of the Berne Convention and are protected as such; and

b. collections or 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, are protected as collections or compilations of works. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

2. Each Party shall provide in respect of works protected under paragraph (1) of this Article, the economic rights of authors and their successors in interest, as enumerated in the Berne Convention (1971). For this purpose, the Parties agree that such rights shall include the following:

a. the right to authorize or prohibit the importation into the territory of the Party of copies of the work;

b. the right to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right holder;

c. the right to authorize or prohibit the first public distribution of the original and each copy of a work by sale, rental, or otherwise;

d. in respect of computer programs, the right to authorize or prohibit the commercial rental of the original or copies of the copyrighted work. Putting the originals or copies of such computer programs on the market with the consent of the right holder shall not exhaust the rental right. In respect of computer programs, this obligation does not apply to rentals where the program itself is not an essential object of the rental; and

e. the right to authorize or prohibit the communication of a work to the public.

3. The provisions of paragraph 2 shall apply without formality or conditions to all subject matter covered by this article, as well as to new rights, interests, and beneficiaries which are protected under a Party's national law.

4. With respect to works and sound recordings, each Party shall permit that all economic rights be freely and separately transferred through contracts for the purposes of their exploitation and enjoyment by natural or legal persons. Each Party will ensure that natural or legal persons acquiring or holding economic rights by virtue of contract or otherwise, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in their own names and enjoy fully the benefits derived therefrom.

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

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

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

8. Neither Party may, as a condition of according protection under this Article or Article 5, require right holders to comply with any formalities and conditions in order to acquire rights in respect of copyright and related rights. If a Party grants any right or benefit in a work, phonogram or videogram, including remuneration from levies for private copying or rental activity, all such benefits shall be available on the basis of national treatment to nationals of the other Party. A Party may require persons claiming such rights to present appropriate evidence supporting their claim.

#### Article Five Sound Recordings

1. Each Party shall provide to producers of sound recordings the following rights:

- a. to authorize or prohibit the direct or indirect reproduction of their sound recordings;
- b. to authorize or prohibit the importation into the territory of the Party of copies of the work;
- c. to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right holder;
- d. the right to authorize or prohibit the first public distribution of the original and each copy of a sound recording; and
- e. to authorize or prohibit the commercial rental of the original or copies of the sound recording. Putting the originals or copies of sound recordings on the market with the consent of the right holder shall not exhaust the right.

2. The term of protection available under this Agreement to sound recordings shall last at least until the end of a period of 50 years from the end of the calendar year in which the fixation was made.

3. Limitations upon and exceptions to the rights provided under this Agreement in respect of sound recordings shall be confined to certain special cases which do not conflict with a normal exploitation of the sound recordings and do not prejudice the legitimate interests of the right holder.

#### Article Six Protection of Encrypted Satellite Signals

1. Each Party shall make it a criminal offense to manufacture, import, sell, lease, or otherwise make available in connection with commercial activities a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of that signal.

2. Each Party shall make it actionable to receive, in connection with commercial activities, or to further distribute, encrypted program-carrying satellite signals without the authorization of the lawful distributor of such signals or to engage in any activity prohibited under paragraph 1

of this Article. Each Party shall provide that actions may be taken by any person who holds an interest in the encrypted programming signal or the content thereof.

#### Article Seven Trademarks

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one person or entity from another shall be capable of constituting a trademark. Such signs, in particular, words, including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging shall be eligible for registration as trademarks.

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

3. The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion. These rights shall not prejudice any existing prior rights, nor shall they affect the possibility of Parties making rights available on the basis of use.

#### 4. Acquisition of Rights

a. A trademark right may be acquired by registration or by use.

b. Each Party shall provide a system for the registration of trademarks which shall provide for the examination of applications and include provision of notification to an applicant of reasons for refusal to register a trademark and the opportunity to respond to such notification. Each Party shall publish each trademark either before it is registered or promptly thereafter. Each Party shall afford other parties a reasonable opportunity to petition to cancel the registration and may afford a reasonable opportunity for other parties to oppose the registration of such a trademark.

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

d. Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. In determining whether a trademark is well-known, account shall be taken of knowledge of the trademark in the relevant sector of the public, including knowledge in that Party obtained as a result of the trademark's promotion. A Party shall not require that the reputation of the trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

e. The rights described in paragraph 2 shall not prejudice any existing prior rights nor shall this affect the possibility of Parties making rights available on the basis of use.

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

#### 6. Requirement of Use

a. If use of a registered mark is required to maintain trademark rights, the registration may be canceled for reason of non-use only if the mark is not used for a continuous period of at least two years, unless legitimate reasons for non-use exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

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

c. The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

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

#### Article 8 Geographical Indications of Origin

1. Each Party shall provide, in respect of geographical indications, the legal means for interested persons to prevent:

a. the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a territory, region or locality other than the true place of origin, in a manner that misleads the public as to the geographical origin of the good; and

b. any use that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Each Party shall, on its own initiative if its domestic law so permits or at the request of an interested person, refuse to register, or invalidate the registration of, a trademark containing or consisting of a geographical indication with respect to goods that do not originate in the indicated territory, region or locality, if use of the indication in the trademark for such goods is of such a nature as to mislead the public as to the geographical origin of the good.

3. Each Party shall also apply paragraphs 1 and 2 to a geographical indication that, although correctly indicating the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory, region or locality.

4. Nothing in this Article shall be construed to require a Party to prevent continued and similar use of a particular geographical indication of another Party in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in that Party's territory, either:

a. for at least 10 years, or

b. in good faith,

before the date of signature of this Agreement.

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

a. before the date of application of these provisions in that Party, or

b. before the geographical indication is protected in its Party of origin, no Party may adopt any measure to implement this Article that prejudices eligibility for, or the validity of, the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. No Party shall be required to apply this Article to a geographical indication if it is identical to the customary term in common language in that Party's territory for the goods or services to which the indication applies.

7. A Party may provide that any request made under this Article in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

8. No Party shall adopt any measure implementing this Article that would prejudice any person's right to use, in the course of trade, its name or the name of its predecessor in business, except where such name forms all or part of a valid trademark in existence before the geographical indication became protected and with which there is a likelihood of confusion, or such name is used in such a manner as to mislead the public.

9. Nothing in this Article shall be construed to require a Party to protect a geographical indication that is not protected, or has fallen into disuse, in the Party of origin.

#### Article Nine Patents

1. Patentable Subject Matter. Subject to subparagraphs a and b, each Party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For 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. Patents shall be available and patent rights enjoyable without discrimination as to the field of technology and whether products are imported or locally produced.

a. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent.

b. A Party may also exclude from patentability:

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

ii. plants and animals other than microorganisms; and

iii. essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes for such production.

Notwithstanding subparagraph b, each Party shall provide for the protection of plant varieties through patents, an effective scheme of sui generis protection, or both.

## 2. Rights Conferred

a. A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing the product obtained directly by that process.

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

i. the product is new; or

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

c. A Party may revoke a patent only when:

a. grounds exist that would have justified a refusal to grant the patent; or

b. the grant of a compulsory license has not remedied the lack of exploitation of the patent.

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

4. The term of protection available shall not end before the expiration of 20 years from the date of filing or 17 years from the date of grant of the patent. Each Party is encouraged to extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

## 5. Use Without The Authorization of the Right Holder

Where the law of a Party allows for use of the subject matter of a patent, other than that use allowed under paragraph 3, 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 only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of

national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as-soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

c. the scope and duration of such use shall be limited to the purpose for which it was authorized;

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 motivated request, the continued existence of these circumstances;

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

i. the legal validity of any decision relating to the 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) where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. The need to correct anticompetitive 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

1. 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.

#### Article Ten Layout-Designs of Semiconductor Integrated Circuits

1. Parties agree to provide protection to the layout-designs (topographies) of integrated circuits (hereinafter referred to as "layout-designs") in accordance with Articles 2-7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with paragraphs 2-4 hereof.

2. Subject to the provisions of subparagraph a of paragraph 3 below, the Parties shall consider unlawful the following acts if performed without the authorization of the right holder: importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article

incorporating such an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout-design.

### 3. Acts Not Requiring the Authorization of the Holder of the Right

a. Notwithstanding paragraph 2 above, neither Party shall consider unlawful the performance of any of the acts referred to in that paragraph in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Parties shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, he may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the holder of the right a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout-design.

b. The conditions-set out in sub-paragraphs (a) through (k) of article 9 paragraph 5 above shall apply mutatis mutandis in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

### 4. Term of Protection.

a. In each Party requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of ten years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

b. If a Party does not require registration as a condition for protection, layout-designs shall be protected for a term of no less than ten years from the date of the first commercial exploitation wherever in the world it occurs.

c. Notwithstanding paragraphs 1 and 2 above, a Party may provide that protection shall lapse fifteen years after the creation of the layout-design.

### Article Eleven Acts Contrary to Honest Commercial Practices and the Protection of Trade Secrets

1. Each Party shall provide the legal means for any person to prevent trade secrets 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:

a. the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;

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

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

2. Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph 1 exist.

3. Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

#### 4. Requirements for Information Submitted to Parties

a. If a Party requires, as a condition of approving the marketing of pharmaceutical or agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, that Party shall protect such data against unfair commercial use. Further, each Party shall protect such data against disclosure except where necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

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

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

### Article Twelve Enforcement of Intellectual Property Rights

#### 1. General Provisions

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

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

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

d. Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in each Party's laws concerning the importance of a case, an opportunity for judicial review of the legal aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided.

e. It is understood that this Article does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws in general, nor does it affect the capacity of each Party to enforce its laws in general. Nothing in this Article creates any obligation with respect to the distribution of

resources as between enforcement of intellectual property rights and the enforcement of laws in general.

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

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

b. Each Party shall provide its judicial authorities the authority to order a party to a proceeding to desist from an infringement, including to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right. The Parties are not required to accord such authority in respect of protected subject matter acquired or ordered by a person or entity prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

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

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

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

f. In order to create an effective deterrent to infringement, each Party shall provide its judicial authorities the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed outside the channels of commerce in such a manner as to avoid causing any harm to the right holder, or destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interest of third parties shall be taken into account.

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

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

i. Each Party may also provide administrative procedures to enforce intellectual property rights. To the extent that any civil remedy can be ordered as a result of an administrative decision on the merits of a case, the procedures shall conform to principles equivalent in substance to those set forth in paragraphs 1 and 2 of this Article.

### 3. Provisional Measures

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

i. to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods, no later than immediately after customs clearance; and

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

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

c. Each Party shall provide its judicial authorities the authority to adopt provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right-holder, or where there is a demonstrable risk of evidence being destroyed.

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

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

f. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant (other than settlement of the case), or where it is subsequently found that

there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

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

4. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting and copyright piracy on a commercial scale. Penalties available shall include imprisonment and monetary fines sufficient to provide an effective deterrent and in appropriate cases the seizure, forfeiture and destruction of the infringing goods and of any device the predominant use of which has been in the commission of the offence. Each Party may provide for criminal procedures and penalties to be applied in cases of infringement of any other intellectual property right, in particular where it is committed willfully and on a commercial scale.

#### Article Thirteen Definitions

For purposes of this Agreement:

1. "Integrated circuit" shall mean a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.

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

3. An "encrypted satellite signal" is a program-carrying satellite signal which has been processed electronically or otherwise for the purpose of preventing intelligible reception of the programs contained therein without modification of the signal.

4. "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 (1971) and the Geneva Convention. With respect to the protection of layout-designs of semiconductor integrated circuits, a "national" shall be:

a. natural persons who are nationals of, or are domiciled in the territory of, one of the Parties; and

b. legal entities which, or natural persons who, in the territory of either of the Parties have a real and effective establishment for the creation of layout-designs or the production of integrated circuits.

5. An "original layout design" is a layout design that is the result of its creator's own intellectual effort and is not commonplace among creators of layout designs and manufacturers of integrated circuits at the time of its creation.

6. With respect to the right in Article Four, paragraph 2(e) to authorize or prohibit the communication of a work to the public, the term "public" shall include, with respect to rights of communication and performance of works provided for under Articles 11, 11bis (i), (ii) and (iii) and 14.1(ii) of the Berne Convention and with respect to dramatic, dramatico-musical, musical and cinematographic works, 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.

8. "Trademark" shall include service marks, collective and certification marks.

#### Article Fourteen General Exception

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations consistent with this Agreement relating to the protection and enforcement of intellectual property rights and the prevention of deceptive practices.

#### Article Fifteen National Security

The provisions of this Agreement shall not be construed to prevent either Party from taking any action in pursuit of its obligations under the United Nations Charter for the maintenance of international peace and security or which it considers necessary for the protection of its essential security interests:

1. relating to fissionable materials or the materials from which they are derived;
2. relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or
3. taken in time of war or other emergency in international relations.

#### Article Sixteen Consultations

The Parties agree to consult promptly at the request of either Party upon any matter concerning the interpretation, implementation or operation of this Agreement.

#### Article Seventeen Entry into Force and Final Provisions

1. Effective upon signature, each Party agrees that where there is legislative authority for implementing obligations under this Agreement, the necessary regulations will be made within nine months. Each Party agrees to exert its best efforts to enact, within eighteen

months from the signing of this Agreement, the legislation and regulations necessary to implement its provisions.

2. Articles 1 through 16 of this Agreement shall come into force upon the Parties' exchange of notes indicating that all the legislation and regulations necessary to give full effect to the obligations undertaken herein have come into force.

3. This Agreement shall remain in force for an initial period of ten years and shall continue in force thereafter until terminated in accordance with this paragraph. Either Party may, by giving one year's notice to the other Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter.

DONE this 17th day of March, 1994, in Kingston, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF JAMAICA: