

Agreement Between The United States Of America And The Republic Of Latvia

On Trade Relations And Intellectual Property Rights Protection

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

Noting the bilateral Most-Favored-Nation Agreement on Customs Matters of April 30, 1926 and the bilateral Treaty of Friendship, Commerce and Consular Relations of July 25, 1928 between the two Parties,

In furtherance of Article Three of their bilateral Agreement Concerning the Development of Trade and Investment Relations of December 9 1992,

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

Affirming the desire of both parties to develop their trade relations based on the principles embodied in the General Agreement on Tariffs and Trade,

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

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

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

Noting the progress made by the Republic of Latvia in its transition to a market economy,

Taking into account the Republic of Latvia membership in the International Monetary Fund and the International Bank for Reconstruction and Development and the prospects for economic reform and restructuring of the economy,

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

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

Have agreed as follows:

CHAPTER I TRADE

ARTICLE I

MOST-FAVORED-NATION AND NONDISCRIMINATORY TREATMENT

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

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

- (b) methods of payment for imports and exports, and the international transfer of such payments;
- (c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;
- (d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and
- (e) laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation, distribution, storage and use of products in the domestic market.

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

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

4. The provisions of paragraph 1 and 2 of this Article shall not preclude action by either Party which is required or specifically permitted by the General Agreement on Tariffs and Trade (the "GATT"), or by any joint action or decision of the Contracting Parties to the GATT, during such time as such Party is a Contracting Party to the GATT. Similarly, the provisions of paragraphs 1 and 2 shall not apply to special advantages accorded by virtue of the GATT.

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

- (a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area, and
- (b) advantages accorded to third countries for the facilitation of frontier traffic.

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

ARTICLE II

NATIONAL TREATMENT

For the purposes of Chapter I of this Agreement:

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

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

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

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

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

6. Both parties have acceded to the Convention Establishing the Customs Cooperation Council and recognize that the Republic of Latvia has taken steps to accede to the International Convention on the Harmonized Commodity Description and Coding System, to which the United States is a signatory.

ARTICLE III

GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. The Parties shall seek to achieve a satisfactory balance of market access opportunities through the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade resulting from multilateral negotiations.

2. Neither Party shall require its nationals or companies to engage in barter or countertrade transactions with nationals or companies of the other Party. Nevertheless, where nationals or companies decide to resort to barter or countertrade operations, the Parties may furnish them information to facilitate the transaction.

ARTICLE IV

EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate trade in goods and services and to secure favorable conditions for long-term development of trade relations between their respective nationals and companies.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE V

GOVERNMENT COMMERCIAL OFFICES

1. Subject to its laws and regulations governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures third-country nationals.
2. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.
3. Each Party shall encourage the participation of its nationals and companies in the activities of the other Party's government commercial offices, especially with respect to events held on the premise of such commercial offices.
4. Each Party shall encourage and facilitate, access by government commercial office personnel of the other Party to host-country officials at both the national and subnational level, and to representatives of nationals and companies of the host Party.

ARTICLE VI

FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to such transactions, all commercial transactions shall be made in United States dollars or any other currency that may be designated periodically by the International Monetary Fund as being a freely usable currency.
2. Neither Party shall restrict the transfer from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals and companies of the other Party.
3. Without, derogation from paragraph 2 of this Article, in connection with trade in products and services, each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:
 - (a) opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited in financial institutions located in the territory of the Party;
 - (b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country; and
 - (c) rates of exchange and related matters, including access to freely usable currencies.

ARTICLE VII

TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, intellectual property, taxation, banking, insurance and other financial services, transport and labor.
2. Each Party shall provide nationals and companies of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.
3. Each Party shall allow, to the extent possible, the other Party and its nationals the opportunity to comment on the formulation of rules and regulations which affect the conduct of business activities covered by this Agreement.

ARTICLE VIII

AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible in all fields deemed to be in their mutual interest.
2. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE IX

EMERGENCY ACTION ON IMPORTS

1. If, as a result of unforeseen developments and of the effect of the obligations incurred by a Party under the GATT or this Agreement, including tariff concessions, any product is being imported into, the territory of that Party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the Party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concessions.
2. Before a Party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall afford the other Party, if it has a substantial interest as exporter of the product concerned, an opportunity to consult with it in respect of the proposed action. In critical circumstances where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultations shall be effected immediately after taking such action.
3. Unless a different solution is mutually agreed upon during the consultations, the importing Party shall be free to take or continue action under paragraph 1 of this Article. In that event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

ARTICLE X

COMMERCIAL DISPUTES

For the purposes of Chapter I of this Agreement:

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not be entitled to claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions, they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.
2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States of America and nationals or companies of the Republic of Latvia. Such arbitration may be

provided for by agreements in contracts between such nationals and companies, or in separate written agreements between them.

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

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

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

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

CHAPTER II

INTELLECTUAL PROPERTY RIGHTS

ARTICLE I

NATURE AND SCOPE OF INTELLECTUAL PROPERTY RIGHTS OBLIGATIONS

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

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

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

If a Party has not acceded to the specified text of these conventions on or before the date of entry into force of this Agreement, it shall make every effort to accede as soon as possible but, in any event, shall accede no later than December 31, 1995.

2. Both parties reaffirm their commitments to carry out the obligations of the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention).

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

ARTICLE II

NATIONAL TREATMENT

For the purposes of Chapter II of this Agreement:

1. Each Party shall provide in its territory treatment no less favorable to nationals of the other Party than it provides to its own nationals with respect to laws, regulations and practices related to the protection and enforcement of intellectual property rights.

2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities in order to acquire rights in respect of copyright and related rights.

3. No party shall be required to accord to nationals of the other Party national treatment with respect to procedures under the Patent Cooperation Treaty or procedures for acquisition or maintenance of trademarks under the Madrid Agreement Concerning the International Registration of Marks.

ARTICLE III

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 the Berne Convention. In particular:

(a) all types of computer programs are literary works within the meaning of the Berne Convention and shall be protected as such; and,

(b) compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.

The protection a Party provides under 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 interests the economic rights enumerated in the Berne Convention (1971), and including 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 authorize or prohibit the first public distribution of the original and each copy of a work by sale, rental, or through any other means;

(c) 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,

(d) the right to authorize or prohibit the communication of a work to the public.

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

(a) any person acquiring or holding economic rights may freely and separately transfer such rights by contract; and

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

4. No Party may, as a condition of according protection under this Article, require right holders to comply with any formalities in order to acquire rights in respect of copyright and related rights.

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 first 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 in respect of copyright and related rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

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

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

(a) to authorize or prohibit the direct or indirect reproduction, in whole or in part, of their sound recordings;

(b) to authorize or prohibit the importation into the territory of the Party of copies of the sound recording;

(c) to authorize or prohibit the first public distribution of the original and each copy of a sound recording; and,

(d) 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.

9. 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.

ARTICLE IV

PROTECTION OF ENCRYPTED SATELLITE SIGNALS

1. Each Party shall as soon as possible, but no later than December 31, 1995, make it a criminal offense to manufacture, import, sell, lease, or otherwise make available 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 as soon as possible, but no later than December 31, 1995, make it a civil offense to receive, in connection with commercial activities, or 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. Such illegal acts shall be actionable by, among others, any person who holds a legitimate interest in the content of the encrypted programming signal.

ARTICLE V

TRADEMARKS

1. Protectable Subject Matter

For purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including words, personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging. Trademarks shall include service marks and collective marks, and may include certification marks. A Party may require, as a condition for registration, that a sign be visually perceptible.

2. Rights Accorded

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 acquired by registration or by use if a Party makes rights available under its law on the basis of use.

3. Acquisition of Rights

(a) A trademark right may be acquired by registration or by use, in accordance with the legislation of each Party.

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

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

(d) Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. Article 6bis of the Paris Convention shall apply, with such modifications as are necessary, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. No 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 and or that the trademark be registered.

(e) 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.

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

4. Term of Protection

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

5. Requirement of Use

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

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

(c) No Party shall 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.

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

7. Compulsory Licensing and Transfer of Rights 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.

ARTICLE VI

PATENTS

1. Patentable Subject Matter

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

Each Party shall provide for the protection of plant varieties through patents, or if not an invention through an effective scheme of protection consistent with the International Convention for the Protection of New Varieties of Plants, 1978, or the International Convention for the Protection of New Varieties of Plants, 1991.

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 confidential information shall be taken into account.

(c) A patent may be revoked only on grounds that would have justified a refusal to grant the patent as a result of an examination or on procedural grounds.

(d) Each Party may allow for the lapse of a patent where the fees required to maintain the patent in force are not paid prescribed time periods.

3. Exceptions

Each Party may provide limited exceptions to the exclusive rights conferred by a patent, such as for acts done for experimental purposes, provided that the exceptions do not significantly prejudice the economic interests of the right-holder taking account of the legitimate interests of third parties.

4. Term of Protection

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

5. Transitional Protection

A Party shall provide transitional protection for products embodying subject matter for which product patents were not available prior to February 28, 1992, where the following conditions are satisfied:

(a) the subject matter to which the product relates became patentable with the implementation of the Party's patent law;

(b) a patent has been issued for the product by the other Party based upon an application filed twelve months or more before the date on which product patent protection became available for that subject matter, but not before February 28, 1984;

(c) the product has not been marketed in the territory of the Republic of Latvia prior to the date on which patent protection for pharmaceutical products became effective in the Republic of Latvia; and

(d) the product has not been manufactured in the territory of the Republic of Latvia prior to the date on which patent protection for pharmaceutical products became effective in the Republic of Latvia, provided that the manufacturer of such product must, in the case of the collision of rights, provide proof that it was in fact manufacturing such product prior to the date on which product patent protection became effective in the Republic of Latvia. Such proof may be in the form of an official authorization completed prior to the date on which product patent protection became effective in the Republic of Latvia.

The transitional protection must, at least, give the patent owner or his assignee the right to exclude others from making, using and selling the invention during the remaining term of the patent granted in the United States. A request for the transitional protection for a particular pharmaceutical product must be filed with the Patent Office of the Republic of Latvia within 18 months after the entry into force of this Agreement, or within 18 months from the date of patent grant in the United States, whichever is later.

6. Compulsory Licensing

Where the law of a Party allows for use of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

- (a) authorization of such use shall be considered on its individual merits;
- (b) such use may only be permitted if, prior to such use, the proposed user had made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement 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 which enjoys such use;
- (f) any such use shall be authorized predominantly for the supply of the domestic market of the Party authorizing such use;
- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Party;

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

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

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

ARTICLE VII

LAYOUT DESIGNS OF SEMICONDUCTOR INTEGRATED CIRCUITS

1. Subject Matter for Protection

(a) In accordance with the provisions of this Article, each Party shall as soon as possible, but no later than December 31, 1995, provide protection for original layout designs incorporated in a semiconductor integrated circuit, however the layout design might be fixed or encoded.

(b) Each Party may condition protection on fixation or registration of the layout designs. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout design in which to apply. A Party which requires deposits of identifying material or other material related to the layout design shall not require applicants to disclose confidential information unless it is essential to allow identification of the layout design.

2. Rights Acquired

(a) Each Party shall provide to right-holders of layout designs of the other Party the exclusive right to do or to authorize the following:

(i) to reproduce the layout design;

(ii) to incorporate the layout design in a semiconductor chip; and

(iii) to import or distribute a semiconductor integrated circuit incorporating the layout design and products including such integrated circuits.

(b) Neither Party is required to extend protection to layout designs that are commonplace in the industry at the time of their creation or to layout designs that are exclusively dictated by the functions of the circuit to which they apply.

(c) Each Party may exempt the following from liability under its law:

(i) reproduction of a layout design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout design that is itself original;

(ii) importation and distribution of semiconductor chips, incorporating a protected layout design, which were sold by or with the consent of the owner of the layout design; and

(iii) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout design was protected, provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock but is liable for a reasonable royalty on the sale of each item after notice is received.

3. Term of Protection

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

ARTICLE VIII

ACTS CONTRARY TO HONEST COMMERCIAL PRACTICE

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 of this Article exist.

3. Licensing

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. Government Use

(a) If a Party conditions marketing approval for pharmaceuticals or agricultural chemicals utilizing new chemical entities upon submission of test or other data showing product safety and efficacy, that Party shall prevent disclosure of such data unless disclosure is necessary to protect the public or others are prevented from making unfair commercial use of the data.

(b) For a reasonable period of time, generally not less than five years from the date on which marketing approval was granted, other applicants shall not be granted marketing approval on the basis of data submitted by the first applicant without the latter's approval.

(c) If a Party grants marketing approval based upon an approval granted by the other Party, it may measure the "reasonable period of time" referred to in B above from the date marketing approval was granted in the other Party.

ARTICLE IX

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

For the purposes of Chapter II of this Agreement:

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.

2. Specific Procedural and Remedial Aspects Of Civil Actions

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

(b) Each Party shall provide its judicial authorities the authority to order a party to a proceeding to desist from an infringement, including to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right. 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 this paragraph.

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. Parties shall also provide their 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 point (d) above, provisional measures taken on the basis of (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 subsection (3) of this Article.

4. Criminal Procedures

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting and copyright piracy on a commercial scale. Penalties available shall include imprisonment and monetary fines sufficient to provide an effective deterrent and, in appropriate cases the seizure, forfeiture and destruction of the infringing

goods and of any device the predominant use of which has been in the commission of the offense. Each Party may provide for criminal procedures and penalties to be applied in cases of infringement of any other intellectual property right, in particular where it is committed willfully and on a commercial scale.

CHAPTER III GENERAL ARTICLES

ARTICLE I

DEFINITIONS

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

(a) "company" means any kind of:

(i) corporation,

(ii) company,

(iii) association,

(iv) partnership,

(v) sole proprietorship,

(vi) joint venture, or

(vii) other organization

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

(b) "national" means an individual who is a citizen or permanent resident of a Party and also include, for the United States of America, "national of the United States" as defined in the existing provisions of the United States Immigration and Nationality Act.

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

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

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

(c) "right-holder" means the right holder himself, any other natural or legal person authorized by him who are exclusive licensees of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights.

(d) "integrated circuit" shall mean a product, in 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.

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

(f) With respect to the right in Chapter II, Article III, paragraph 2(d) of this Agreement to authorize or prohibit the communication of a work to the public, and consistent with Chapter II, Article III, paragraph 5, the term "communication to the public" shall include:

(i) communicating a work, in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

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

(g) "intellectual property rights" include copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, and plant breeders rights.

(h) "confidential information includes trade secrets, privileged information and other materials exempted from disclosure under the Party's domestic law.

(i) "lawful distributor" means the person or legal entity holding the right to authorize the transmission of the program-carrying satellite signal to the general public or any section thereof in the territory of the Party.

(j) "Person" means a national or a company (as defined in Chapter III, Article I, paragraph 1, subparagraph A of this Agreement) of a Party.

ARTICLE II

NATIONAL SECURITY

Nothing in this Agreement shall be construed:

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

(a) relating to fissionable materials or the materials from which they are derived;

(b) 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;

(c) taken in time of war or other emergency in international relations; or

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

ARTICLE III

GENERAL EXCEPTIONS

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

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

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

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

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

ARTICLE IV

CONSULTATIONS

1. The Parties reaffirm their commitment to establish a Joint Commercial Commission which will, subject to the terms of reference of its establishment, foster economic cooperation and the expansion of trade under this Agreement and review periodically the operation of this Agreement and make recommendations for achieving its objectives.

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

ARTICLE V

ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement shall enter into force on the date of exchange of written notices of acceptance by the two governments and shall remain in force unless terminated in accordance with paragraph 2 of this Article.

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

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

DONE at Riga, this sixth day of July, 1994, in two original copies in the English language. A Latvian language text shall be prepared which shall be considered equally authentic upon an exchange of diplomatic notes confirming its conformity with the English language text.

FOR THE UNITED STATES OF AMERICA:

William J. Clinton [signature]

FOR THE REPUBLIC OF LATVIA:

Valdis Birkavs [signature]