

Ecuador Intellectual Property Rights Agreement

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF ECUADOR

CONCERNING THE PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

The Government of the United States of America and the Government of Ecuador hereinafter referred to collectively as "Parties" and individually as "Party") agree to provide adequate and effective protection and enforcement of all intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

Article One National Treatment

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 implementing the provisions of this Agreement.

Article Two Nature and Scope of Obligations

1. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, observe the commitments below and give effect to the substantive economic provisions of:

- 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
- c. the Paris Convention for the Protection of Industrial Property, 1967 (Paris convention).

If the 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.

2. A Party may implement in its domestic law more extensive protection of intellectual property rights than is required by this Agreement, provided that such protection is not inconsistent with this Agreement.

Article Three 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. For example:

- a. all types of computer programs are literary works within the meaning of the Berne convention and 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.

All works, now known or later developed, regardless of their medium of fixation, shall enjoy protection under the copyright law, without prejudice to their protection under other intellectual or industrial property laws.

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), which 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 through any other means of distribution to the public;
- 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. 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 for purposes of their exploitation and enjoyment by the transferee; 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.

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

4. 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.

5. 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 or sound recording and do not unreasonably prejudice the legitimate interests of the right holder.

6. 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.

7. 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 sound recording;
- c. to prevent the importation into the territory of the Party of copies of the sound recording 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.

8. 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 Four Protection of Encrypted Satellite Signals

1. Each Party shall make it a criminal offense to manufacture, import, sell, lease, or otherwise make available a device or system capable of decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal.

2. Each Party shall make it illegal to receive, in connection with commercial activities, or further distribute, an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal 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 an interest in the content of such signal.

Article Five 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 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, nor shall they affect the possibility of a Party making rights available 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 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 all trademark applications for purposes of opposition and afford a reasonable opportunity for other parties to oppose the registration of such a trademark. The right of third parties to request cancellation of a registration shall be granted.
- 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 deal with the relevant goods or services.

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. Nothing

shall prevent the Parties from allowing indefinite registration, subject to cancellation for non-use, fraud or other reasons permitted under the law of the Party.

5. Requirement of Use

a. If use of a registered mark is required to maintain trademark rights, 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 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. 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. Each Party shall permit trademark registrations to be transferred. Nothing in the Agreement shall prohibit a Party from conditioning such transfer on the transfer of the goodwill to which the trademark belongs.

8. Each Party shall prohibit the registration as a trademark of words, at least in English or Spanish, that generically designate goods or services or types of goods services to which the trademark applies.

9. 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.

10. Each Party may refuse to register as a trademark:

- a. A color if it consists of a color in isolation without being embodied in a specific form;
- b. A shape that is primarily functional.

Article Six Patents

1. Patentable Subject Matter

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

b. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect order 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.

c. A Party may also exclude from patentability:

- (i) Diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (ii) Plants and animal varieties 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 (ii) , each Party shall provide for the protection of plant varieties through 1) patents, or 2) 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, or 3) 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 patent may be revoked only on grounds that would have justified a refusal to grant the patent.

d. Each Party may allow for the lapse of a patent where the fees required to maintain the patent in force are not paid within 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. The exceptions in subparagraphs b) and c) of Article 35 of Decision 313 of the Cartagena Agreement are consistent with this obligation.

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.

5. Transitional Protection

A Party shall provide transitional protection for products embodying subject matter deemed to be unpatentable under its patent law prior to its implementation of the provisions of this Agreement, where the following conditions are satisfied:

a. the subject matter to which the product relates will become patentable after implementation of the provisions of this Agreement;

b. a patent has been issued for the product by the other Party prior to the entry into force of this Agreement; and

c. the product has not been marketed in the territory of the Party providing such transitional protection.

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

6. Compulsory Licenses

A Party may provide that no compulsory licenses for patents shall be permitted. 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 case 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, upon motivated request, the continued existence of these circumstances. Compulsory licenses shall cease if at any moment the licensee is in default regarding payments or other obligations where required;
- 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 subparagraph b) and f) 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 that led to such authorization are likely to recur;
- l. The Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anti-competitive practices.

7. Subject to subparagraphs b) and c) of Article 6.1, patents shall be available and patent rights enjoyable without discrimination as to the field of technology, and whether products are imported or locally produced.

Article Seven Layout-Designs of semiconductor Integrated circuits

1. Subject Matter for Protection

- a. Each Party shall 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 choose to establish a special registration system for layout designs. If a layout design is registered, registration shall constitute prima facie evidence of rights in the layout design. A Party that requires

special registration for layout designs may condition protection on fixation or registration of the design. 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 or proprietary 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. The conditions set out in paragraph 6 of Article Six shall apply, *mutatis mutandis*, to the grant of any compulsory licenses for layout-designs.

c. 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.

d. 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, if a Party requires special registration for layout designs, at least ten years from the date of registration of the design, whichever is earlier.

Article Eight Acts Contrary to Honest Commercial Practice and the Protection of Trade Secrets

1. In the course of ensuring effective protection against unfair competition as provided for in Article 10bis of the Paris Convention for the Protection of Industrial Property, each Party shall provide in its domestic law and practice the legal means for nationals to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices insofar as such information:

a. is not , as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

b. has actual or potential commercial value because it is not generally known or readily ascertainable; and

c. has been subject to 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. 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 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 that 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 Nine Enforcement of Intellectual Property Rights

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. 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 Article 9, 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 restrain 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 Article Nine (1).

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 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 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 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 Ten 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 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, 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), the Geneva Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, as if each were a Party to those conventions.

5. With respect to the right in, Article Three, paragraph 2 (e) to authorize or prohibit the communication of a work to the public, and consistent with Article Three, paragraph 5, the term "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 (i) 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.

6. "Right-holder," includes the right-holder personally, any other natural or legal person authorized by the right-holder 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;

7. "Intellectual property rights", refers to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, and plant breeders rights.

Article Eleven 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 Twelve 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 Thirteen 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 Fourteen Relationship to Other Agreements

The Parties recognize that this Agreement, in the majority of its effects, clarifies and supplements the existing multilateral intellectual property agreements to which the United States of America and Ecuador adhere or which are mentioned in Article 2 of this Agreement. This Agreement does not contravene the provisions of such Agreements or modify other Agreements that are valid in determined economic zones or with other countries.

Article Fifteen Final Provisions

1. The Parties shall assume the obligations of this Agreement upon signature. 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.
2. The Parties will implement this Agreement as an Executive Agreement to the maximum extent possible, such action being without prejudice to seeking its legislative ratification. Each Party shall issue any executive orders or

regulations required to implement this Agreement by December 1, 1993. Furthermore, each Party agrees to submit no later than December 1, 1993, any legislation necessary to carry out fully the obligations of this Agreement and to exert its best efforts to enact and implement this legislation by September 30, 1994.

Done this fifteenth day of October, 1993, in Washington, in the English and Spanish languages, both texts being equally authentic.

For the Government of the United States of America:

For the Government of Ecuador:

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.