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Compendium of International Arrangements on Transfer of Technology : Selected Instruments

Relevant provisions in selected international arrangements pertaining to transfer of technology

United Nations

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Preface

The need for technology transfer, especially to developing countries, has been recognised in various international fora.* Over 80 international instruments and numerous subregional and bilateral agreements contain measures related to transfer of technology and capacity building. The technology-related provisions contained in such instruments follow different approaches, depending on the object and purpose of the respective instruments. They all aim, however, at promoting access to technologies and, in some cases, the development of local capabilities in developing countries, particularly in least developed countries.

The adoption of technology-related provisions is an expression of States' willingness to cooperate internationally to redress or reduce the asymmetric distribution of scientific and technological capabilities in the world. There has been some success in implementation, but more needs to be done. A considerable gap exists between the intentions expressed in the agreed provisions and their effective implementation. This *Compendium* of the various commitments is intended as a reminder of the considerable scope for further policy action.

The present *Compendium* contains a selection of transfer of technology-related provisions drawn from international instruments. Thus, it includes relevant excerpts of international instruments at the multilateral, regional, inter-regional and bilateral levels. The use of the term "instrument" is meant to reflect the variety of form and effect of the international acts and documents. It seems reasonable to group them according to their differing forms and membership: multilateral instruments (universal or quasi-universal in their memberships), interregional instruments (which involve two or more regions often through their respective regional institutions), regional instruments (membership is limited to a particular group, defined geographically or otherwise), bilateral agreements, and other instruments among States, and resolutions of organs of international organizations. Each of these categories contains both legally binding and non-binding instruments. Instruments at the multilateral level (Part I) are grouped in legally binding instruments (Part I.A) and not legally binding ones (Part I.B). The former instruments also include ones not yet in force but agreed-upon by the respective parties. The regional level category also contains both forms of instruments. Drafts, non-governmental instruments and the outcome of an UNCTAD Expert Meeting are reproduced in an annex.

An effort has been made to select instruments that reflect a broad variety of forms, policies, practices and effectiveness of implementation. These aspects are discussed in the Overview. The excerpts in this *Compendium* should not necessarily be viewed as model provisions.

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Geneva, June 2001

* In the Bangkok plan of Action, UNCTAD was requested to "analyse all aspects of existing international agreements relevant to transfer of technology" and "examine and disseminate widely information on best practices for access to technology" (paragraphs 117 and 128), UNCTAD (2000a).

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Overview

The abilities to create new technology and to acquire and adapt successfully technologies from both external and internal sources are critical determinants of a country's ability to compete successfully. While this applies to all countries, it is evident that the transfer of technology from foreign sources and from international and domestic research institutes represents a potent source of technological information particularly for developing countries. The challenge is to establish and maintain effective access to this information and to devise mechanisms for deploying it effectively within an economy. Technological knowledge includes both the know-how of processes for producing goods and services and the organizational and management information needed to produce and distribute it efficiently. Such technology is embedded in machinery, equipment, licensing agreements, and managerial skills. Opportunities to learn also occur through other means such as training and access to the global stock of scientific and technical information. A key component of any transfer process is the effective transfer of the skills and intangible know-how that ensure production capability. [1]

Indeed, since the 1970s, developing countries have expressed in various international fora their desire for improved access to foreign technologies and enhanced technological capabilities. In the past two decades, specific provisions on transfer of technology have been incorporated into various international instruments. Such provisions have different objectives and scope, and different modes of implementation, including the provision of financing, and are subject to different terms and conditions. In most cases, however, such provisions contain only "best efforts" commitments, rather than mandatory rules.

Main categories of instruments

In the context of transfer of technology and capacity building, two broad but overlapping categories of technology-related provisions in international instruments can be distinguished. The first category deals with standard setting to protect proprietary technology. Broadly speaking, "standard setting" instruments attempt to provide a balance between rights and obligations of the creators and potential users of technology.[2] For instance, the basic principles of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) refer to criteria and objectives regarding the contribution that the protection and enforcement of intellectual property rights (IPRs) should make to "the promotion of technological innovation and to the transfer and dissemination of technology" (Article 7). These instruments are essentially concerned with the availability, scope and use of IPRs. Though the TRIPS Agreement expressly refers to transfer of technology, concerns have been expressed about the lack of mechanisms in the Agreement to operationalize it, and the need to develop this concept further in future negotiations has been indicated.[3] This category also includes standard setting instruments concluded at the regional level, for example, NAFTA, European Union, Andean Group and ASEAN.

[1] See also UNCTAD (1996a) and UNCTAD (1999).

[2] In this context, due to the intellectual property rights system, inventions and creative works become commodities that may be transferred by commercial transactions, e.g. bought, leased or sold, and thus have their utilization and diffusion facilitated through investment, licensing or other transfer arrangements.

[3] See Correa (1999) and also UNCTAD (2000b), p. 230.

The second category of instruments focuses more on direct measures for transfer of technology to and capacity building in developing countries, in particular in least developed countries (LDCs). These instruments deal more with the transfer of specific technologies, e.g. technologies for the protection of human health and environment, technologies for the conservation of biodiversity and technologies for the exploration and exploitation of marine resources. While the first category of instruments essentially relies on national measures for their implementation, particularly home country measures in developed countries, the second category has generally in-built mechanisms, including provisions for financing. For instance, in the Montreal Protocol on Substances that Deplete the Ozone Layer, the capacity of the parties to fulfil their obligations to comply with the control measures set out in the Protocol depends on the effective implementation of financial co-operation and the transfer of technology. This category of instruments includes an array of international and regional instruments containing provisions for promoting transfer of technology in various sectors, such as in the case of ESCOWAS, ASEAN and sub-groupings in various regions.

Main features

A main feature of the instruments on transfer of technology and capacity building is that they distinguish between categories of addressees, namely developed and developing countries. Some instruments make an even more specific distinction among the parties by identifying groups of countries. The most common is the special identity accorded to LDCs. The main objective of such distinctions is to assign differing obligations to different categories of addressees, so that technology can be transferred from countries with strong capabilities, i.e. developed countries, to countries with low capacities, i.e. developing countries, more particularly LDCs. Thus, the technology-related provisions refer specifically to developing countries or LDCs. For example, the Agreement on Technical Barriers to Trade, the Montreal Protocol and the TRIPS Agreement recognize, in their respective preambles, the special situation and needs of developing countries and LDCs. Often a favourable treatment for these countries, resulting in differentiated obligations with regard to the implementation process, is included in the instruments. For example, in the Vienna Convention for the Protection of the Ozone Layer (Article 4.2), the Convention on Biological Diversity (Article 16) and the TRIPS Agreement (Article 66.2), specific reference is made to transfer of technology to developing countries and/or to LDCs.

Technology-related provisions are designed to deal with transfer of technology and capacity building for broad objectives or for specific targets, and the consequent obligations are to be met by one or several categories of addressees. For instance, the General Agreement on Trade in Services (GATS) and the TRIPS Agreements both refer to technology in a broader sense, whereas the Law of the Sea Convention deals specifically with marine technology and capacity building in the management, exploration and exploitation of marine resources. Provisions of the Vienna Convention and the Montreal Protocol are related to technologies for environmental protection. Some of these instruments provide a definition of technology. In the absence of a generally accepted definition of technology, the terms of a Convention should be interpreted in accordance with its ordinary meaning, in its context, and in the light of a treaty's object and purpose (Article 31.1 of the Vienna Convention on the Law of the Treaties).[4] This implies that, even in cases included the same terms are used in different instruments, the specific meaning attributed to such terms in a particular agreement should be established, taking into account the context of a provision and the particular object

[4] United Nations (1980), see also Aust (2000).

and purpose of the treaty in question. For example, the object and purpose of the TRIPS Agreement is to establish minimum standards for intellectual property rights.[5] Hence, the reference in Article 66.2 of the Agreement to encourage "technology transfer" to LDCs should be interpreted as alluding to technologies protected by patents and other intellectual property rights.[6] References to technology in other instruments (e.g. Articles 144 and 268 of the Law of the Sea Convention, Article 4 of the Kyoto Protocol, Article 34 of Agenda 21) may be deemed to comprise protected as well as non-protected technologies. The type of technology can also be defined in terms of capacity building. An explicit aim of Agenda 21 is to "support indigenous capacity building", in particular in developing countries, so that they can assess, adopt, manage and apply environmentally sound technologies. Similarly, GATS refers to this specific issue in its annex on telecommunication.

The type of technology is also related to the objective pursued by the technology-related provisions. In some cases, provisions explicitly define their objectives in terms of the results to be achieved or by describing the type of the activities to be undertaken. In other cases the objectives are defined in general terms, or are implicit and can be derived from the wording and context of the relevant provision. An example of a detailed definition of the objectives of technology-related provisions is provided in the Law of the Sea Convention, which details the "basic objectives" to be reached directly or through the competent international organizations. The strengthening of capabilities is also mentioned as an objective of international cooperation in the International Undertaking on Plant Genetic Resources for Food and Agriculture.

In some instruments, the technology-related provisions are less explicit, but the object and purpose of the actions to be undertaken are described in some detail. Thus, the Vienna Convention stresses the need to conduct research and scientific assessments (Article 3.1), encourages the exchange of scientific, technical, socio-economic, commercial and legal information (Article 4.1 and Annex II) and refers to cooperation for the acquisition of technologies and equipment, as well as training (Article 4.2). Unlike the Law of the Sea Convention and Agenda 21, the Vienna Convention focuses more on access to technology than on the development of local capabilities.[7] In other instruments, the section dealing with the general framework indicates areas in which measures may be taken, for instance in the Cotonou Agreement.

Another key feature of provisions related to technology is their method of implementation. As the transfer of technology is a central element in many instruments, capacity building often has as its objective enabling the developing country members to comply with their commitments under the instruments dealing with specific types of technology.

[5] See UNCTAD (1996b).

[6] See, in particular, Article 2 of the TRIPS Agreement.

[7] It should be noted that many instruments include provisions that specifically relate to technology (e.g. Article 19 (g) of the Energy Charter), while others deal simultaneously with scientific and technological matters (e.g. Article 5 (b) of the Kyoto Protocol; Article 16.19 of Agenda 21). In some cases, the object of the provisions is exclusively scientific activities (e.g. Article 143 of the Convention on the Law of the Sea; Article 3 of the Vienna Convention). The Law of the Sea Convention deals specifically with transfer of technology in marine technology and capacity building in the management, exploration and exploitation of marine resources.

Mechanisms of implementation

The implementation of a provision depends on the legal nature of the instrument in terms of its voluntary or legally binding nature, on the hortatory or mandatory character of the provision, on the wording used to define and the conditions applied to the obligations at stake. Some of the selected instruments (International Undertaking,[8] Agenda 21) are not legally binding in nature. This means that any State action that is in conformity with their provisions should be deemed legitimate under international law, but no party is strictly obliged to comply with the instrument. Despite the "soft" nature of these agreements, their negotiation, interpretation and amendment are often as complex and difficult as in the case of binding agreements, since non-binding rules create international precedents.[9] Given their non-binding nature, this type of instrument may include statements intended to establish concepts or principles, without a prescriptive intent.[10]

International instruments that are legally binding in nature contain, in principle, mandatory provisions that require certain positive or negative action by the contracting parties. In some cases, the required conduct is clearly spelled out. Article 66.2 of the TRIPS Agreement provides an example of an obligation imposed on developed countries, which "shall provide incentives to enterprises and institutions" in their territories. Though this provision leaves great leeway to member countries to determine what kind of incentives to apply, it *does* positively require the establishment of some system of encouragement of transfer of technology (any type of technology protected under intellectual property rights) to LDCs. The provision also provides a general objective that may help to assess the appropriateness of such incentives, since they should enable LDCs "to create a sound and viable technological base". The question may be raised as to whether non-compliance with any provision of the TRIPS Agreement, including Article 66.2, could give rise to complaints by the affected members under WTO's dispute settlement Understanding.[11] It should be noted that an authoritative interpretation of the WTO rules can only be made by the member States. The recommendations and rulings of the Dispute Settlement Body cannot add to or diminish rights and obligations provided in the covered agreements (Article 3.2 of the Understanding).[12]

Treaties usually give rise to numerous divergences about their interpretation. In some cases, contracting parties may issue agreed interpretations in order to clarify existing provisions.[13] For instance, under WTO rules it is possible to develop agreed interpretations which, unless otherwise provided, require a three-fourths majority (Article IX of the Marrakesh Agreement Establishing the WTO). Another mechanism that may be used, if provided for by the treaty, is to adopt protocols on particular subjects, as allowed by the Vienna Convention[14] and by the Convention on Biological Diversity.[15] Such protocols make

[8] The revision of the International Undertaking, currently under negotiation in the framework of the Commission on Genetic Resources, may lead to the adoption of a legally binding instrument.

[9] See, for instance, "Part II: Historical perspective and reflection" in Patel, Roffe and Yusuf (2000).

[10] See, e.g. Article 16.10 of Agenda 21 (Human resource development: Training of competent professionals in the basic and applied sciences at all levels… is one of the most essential components of any programme of this kind. Creating awareness of the benefits and risks of biotechnology is essential").

[11] GATT/WTO (1994), Annex 2.

[12] Binding *inter partes* (the Appellate Body and also the Panels refer frequently to earlier decisions)

[13] See also Jackson (2000), in particular page 184.

[14] The Montreal Protocol was developed in the framework of this Convention, considering, *inter alia*, "the importance of promoting cooperation in the research, development and transfer of alternative technologies

it possible to clarify and develop treaty provisions, and to establish specific mechanisms for the implementation of parties' obligations.

Given differences in addressees, type of technology and objectives of international instruments, it is logical to expect instruments to provide for different methods of implementation. The ways in which such provisions can be executed involve a wide range of methods in line with the established differentiated obligations. Some agreements have in-built mechanisms, either in the form of international cooperation, which may require the intervention of international organizations, or in the form of a special institutional set-up for implementation of the provisions, e.g. the Law of the Sea Convention. An interesting case aimed at facilitating transfer of technology to developing countries is offered by the Montreal Protocol. The addressees are developing countries, whose capacity to fulfil the obligations concerning the phase-out of ozone-depleting substances depends upon effective implementation of the financial cooperation and transfer-of-technology provisions of the Protocol (Articles 5, 10 and 10A). Transfer of technology and related provisions on financing are based on the objective/target that ozone-depleting substances, e.g. chlorofluorocarbons (CFCs), should be eliminated by both developing and developed countries.[16] On the basis of the Protocol's flexibility[17] and, consequently, the established differentiated obligations for developing countries, not only is a grace period granted for phasing out the use and production of ozone-depleting substances but also a financial mechanism has been established for transfer of technology for the benefit of these countries. Moreover, the implementation of the agreed obligations by developing countries is made dependent upon the effective implementation by developed countries of the financial cooperation and transfer of technology provisions of the Protocol. Thus, for the fulfilment of the differentiated obligations of parties, a specific method of implementation is built into the Protocol itself.

Questions may be raised as to what extent such mechanisms combining financial provisions and transfer of environmentally sound technologies, including propriety ones, and monitoring arrangements[18] could be emulated in the area of more general types of technology, e.g. relating to infrastructure, health, nutrition and telecommunication.

Many technology-related provisions rely on national measures, particularly home country measures[19] in developed countries, for their implementation. This feature is particularly common in those instruments that are standard-setting ones and deal also with transfer of technology often without determining a specific target to reach. The adoption of home country measures only by developed countries is to be found, for example, in Article 66.2 of the TRIPS Agreement as an obligation for developed countries, which "shall provide incentives to enterprises and institutions in their territories" in order to promote and

relating to the control and reduction of emission of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries" (Preamble).

[15] In the course of the negotiations for the revision of the International Undertaking, one option under consideration has been to adopt the revised Undertaking as a protocol to the Convention on Biological Diversity.

[16] See also UNCTAD (2000c), p. 63.

[17] "Flexibility" can be defined as the ability of an international instrument to be adapted to the particular conditions prevailing in developing countries and to the realities of the economic and technological asymmetries between these countries and developed countries. See UNCTAD (2000d).

[18] The instruments dealing with transfer of technology in specific sectors establish mechanisms to monitor and facilitate States parties' implementation of and compliance with their obligations. The process of establishing such mechanisms in international environmental agreements has been seen as an important contribution to the international law of cooperation. See Churchill, Robin R. and Geir Ulfstein (2000).

[19] See UNCTAD (2000e).

encourage transfer of technology to LDCs to "enable them to create a sound and viable technological base". The effectiveness of implementation depends also on the terms and conditions under which transfer of technology takes place. Different agreements have different terms. In some agreements provisions call for "fair and reasonable terms", whereas some other agreements emphasize the commercial nature of such transfer.

It is interesting to note that, despite the clear recognition of the need for an "effective protection" of IPRs, Article 16.5 of the Convention on Biological Diversity aims at balancing this approach by indicating that cooperation may be necessary to ensure that such rights do not limit or impede the implementation of the Convention. Agenda 21 is more explicit on this subject; and, while requiring that account be taken of the need to protect IPRs (Article 34.14 (b)), it encourages the adoption of measures "to prevent abuses" of such rights, including through compulsory licenses with the provision of "equitable remuneration" to the right holder (Article 34.18 (e)). Conditions relating to IPRs can also be found, *inter alia*, in the Energy Charter (Article 19.1 (h)). The Berne Convention for the Protection of Literary and Artistic Works permits any developing country to grant non-exclusive and non-transferable licenses to its nationals for reproduction or translation of copyright protected works for teaching and scientific research purposes (Appendix).

Finally, at the regional level, instruments that deal with the promotion of, and cooperation in, transfer of technology do not refer to terms and conditions of transfer of technology as such. Mention should also be made of bilateral treaties for the protection and promotion of foreign investment.[20] Some of these instruments refer to transfer of technology in such a way that it could not be used as a performance requirement (for example the Canada-Chile Free Trade Agreement). Some other agreements with the broader objective of trade and investment cooperation (for instance, the partnership agreement between European Union and Ukraine) refer to the protection of intellectual property rights.

While transfer of technology is a fundamental goal of many international instruments, especially in agreements involving developing countries,[21] one of the main challenges is how to ensure that "transfer and diffusion" provisions are given effect and translated into practice. The *Compendium* focuses mainly on the provisions of those international arrangements that can promote and facilitate transfer of technology to developing countries. In other words, it draws particular attention to provisions intended to realize such a transfer of technology. It also includes instruments that do not contain specific provisions relevant to transfer of technology calling for specific actions, but may nevertheless have an impact on the access to and transfer of technology such as IPRs conventions, Andean Group decisions and Directives of the European Union.

[20] For a listing of such treaties, see UNCTAD (2000). Bilateral Investment Treaties, 1959-1999 (Geneva: UNCTAD), UNCTAD/ITE/IIA/2; <http://www.unctad.org/en/pub/poiteiiad2.en.htm>

For their analysis, see UNCTAD (1998). *Bilateral Investment Treaties in the Mid-1990s* (Geneva: UNCTAD) United Nations publication, Sales No. E.98.II.D.8, as well as others international investment treaties contained in UNCTAD (1996). *International Investment Instruments: A Compendium*, vol. I, II and III (Geneva: UNCTAD), United Nations publication, Sales Nos. E.96.II.A.9; E.96.II.A.10; and E.96.II.A.11; UNCTAD (2000). *International Investment Instruments: A Compendium*, vol. IV and V (Geneva: UNCTAD), United Nations publication, Sales Nos. E.00.II.D.13 and E.00.II.D.14; and UNCTAD (forthcoming). *International Investment Instruments: A Compendium*, vol. VI (Geneva: UNCTAD), United Nations publication, forthcoming.

[21] For a more detailed analysis of issues in international investment agreements (IIAs), see UNCTAD (forthcoming).

References

Aust, Anthony (2000). *Modern Treaty Law and Practice* (Cambridge: Cambridge University Press).

Churchill, Robin R. and Geir Ulfstein (2000). "Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law", *American Journal of International Law*, vol. 94, No. 4 (October), pp. 623-659.

Correa, Carlos (1999). "Review of the TRIPS Agreement: fostering the transfer of technology to developing countries", *The Journal of World Intellectual Property*, vol. 2 No. 6 (November), pp. 939-960.

Jackson, John (2000). *The Jurisprudence of GATT & WTO* (Cambridge: Cambridge University Press.

Patel, S., P. Roffe and A. Yusuf (2000). *International Technology Transfer: the Origins and Aftermath of the United Nations Negotiations on a Code of Conduct* (The Hague: Kluwer Law International).

General Agreement on Tariffs and Trade (GATT) /World Trade Organization (WTO) ((1994). "Marrakesh Agreement Establishing the World Trade Organization (WTO)", "Understanding on Rules and Procedures Governing the Settlement of Disputes" in *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts* (Geneva: GATT Secretariat), Sales No. GATT/1994-4, pp. 365-403.

United Nations (1980). "Vienna Convention on the Law of the Treaties (Vienna Convention)" in <http://www.un.org/law/ilc/texts/treaties.htm>.

United Nations Conference on Trade and Development (UNCTAD) (1996a). *Fostering Technological Dynamism: Evolution of Thought on Technological Development Processes and Competitiveness: A Review of the Literature* (Geneva: UNCTAD), United Nations publication, Sales No. E.95.II.D.21.

----(1996b). *The TRIPS Agreement and Developing Countries* (New York and Geneva: United Nations) United Nations publication, Sales No. E.96.II.D.10.

------(1999). *World Investment Report 1999: Foreign Direct Investment and the Challenge of Development* (New York and Geneva: United Nations), United Nations publication, Sales No. E.99.II.D.3 and Corr.1.

-----(2000a). "Plan of Action", Tenth session, Bangkok, 12-19 February 2000 (Geneva: United Nations), United Nations publication, No. TD/386, 18 February.

------(2000b). *Positive Agenda and Future Trade Negotiations* (New York and Geneva: UNCTAD), United Nations publication, Sales No. E.00.II.D.8.

------(2000c). *Achieving Objectives of Multilateral Environmental Agreements: A Package of Trade Measures and Positive Measures – Elucidated by Results of Developing Country Case Studies* (New York and Geneva: UNCTAD), United Nations publication, Sales No.E.00.II.D.12.

-----(2000d). *International Investment Agreements: Flexibility for Development* (Geneva: United Nations), United Nations publication, Sales No. E.00.II.D.6.

-----(2000e). Commission on Investment, Technology and Related Financial Issues, Expert Meeting on Home Country Measures, "Home country measures" (Geneva: UNCTAD), United Nations publication, No. TD/B/COM.2.EM. 8/2, 14 September.

-----(forthcoming). *International Investment Agreements: Transfer of Technology* (Geneva: United Nations), United Nations publication, forthcoming.

CONTENTS

I. MULTILATERAL LEVEL

A. Multilateral Instruments

1. Paris Convention for the Protection of Industrial Property*

Article 2
National Treatment for Nationals of Countries of the Union

1. Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

2. However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.

3. The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

Article 3
Same Treatment for Certain Categories of Persons as for Nationals of Countries of the Union

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

Article 5 quater
Patents: Importation of Products Manufactured by a Process Patented in the Importing Country

When a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, that are accorded to him by the legislation of the country of importation, on the basis of the process patent, with respect to products manufactured in that country.

Article 10bis
Unfair Competition

(1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

* Paris Convention (1883):
WIPO (1991). *Paris Convention for the Protection of Industrial Property*, No. 201(E), (Geneva: WIPO); and <http://www.wipo.int/eng/iplex/wo_par0_.htm>

(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

(3) The following in particular shall be prohibited:

1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

* * *

2. Berne Convention for the Protection of Literary and Artistic Works*

Appendix [Special Provisions regarding Developing Countries]

Article III

[*Limitation on the Right of Reproduction:* 1. Licenses grantable by competent authority; 2. to 5. Conditions allowing the grant of such licenses; 6. Termination of licenses; 7.Works to which this Article applies]

1. Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

2. (a) If, in relation to a work to which this Article applies by virture of paragraph (2), after the expiration of:

(i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or

(ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.

(b) A license to reproduce and publish an edition which has been distributed as described in subparagraph (a) may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.

3. The period referred to in paragraph (2)(a)(i) shall be five years, except that

(i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;

(ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

* Berne Convention (1971):
WIPO (1992). *Berne Convention for the Protection of Literary and Artistic Works*, No. 287(E), Geneva: WIPO); and <http://www.wipo.int/eng/iplex/wo_ber0_.htm> ; and <http://untreaty.un.org/ENGLISH/series/simpleunts.asp>

4. (a) No license obtainable after three years shall be granted under this Article until a period of six months has elapsed

(i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or

(ii) where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) Where licenses are obtainable after other periods and Article IV(2) is applicable; no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(c) If, during the period of six or three months referred to in subparagraph (a) and subparagraph (b), a distribution as described in paragraph (2)(a) has taken place, no license shall be granted under this Article.

(d) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.

5. A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

(i) where the translation was not published by the owner of the right of translation or with his authorization, or

(ii) where the translation is not in a language in general use in the country in which the license is applied for.

6. If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

7. (a) Subject to subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

* * *

3. International Convention for the Protection of New Varieties of Plants (1961)*

Article 3
National Treatment

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their headquarters in one of the member States of the Union shall, in so far as the recognition and protection of the breeder's right are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

(2) Nationals of member States of the Union not resident or having their headquarters in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the new varieties which they have bred to be examined and the multiplication of such varieties to be controlled.

Article 12
Right of Priority

(1) Any breeder or his successor in title who has duly filed an application for protection of a new variety in one of the member States of the Union shall, for the purposes of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall run from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of the preceding paragraph, the further filing must include an application for protection of the new variety, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified to be a true copy by the authority which received it.

(3) The breeder or his successor in title shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State.

* UPOV 1961:
UPOV (1996) *International Convention for the Protection of New Varieties of Plants* of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, UPOV Publication No 221 (E), Geneva.

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

* * *

4. International Convention for the Protection of New Varieties of plants (1991)*

Article 4
National Treatment

1. [*Treatment*] Without prejudice to the rights specified in this Convention, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of each other Contracting Party the same treatment as is accorded or may hereafter be accorded by the laws of each such other Contracting Party to its own nationals, provided that the said nationals, natural persons or legal entities comply with the conditions and formalities imposed on the nationals of the said other Contracting Party.

2. ["*Nationals*"] For the purposes of the preceding paragraph, "nationals" means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States which are members of that organization.

Article 11
Right of Priority

1. [*The right; its period*] Any breeder who has duly filed an application for the protection of a variety in one of the Contracting Parties (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authority of any other Contracting Party (the "subsequent application"), enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

2. [*Claiming the right*] In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The authority with which the subsequent application has been filed may require the breeder to furnish, within a period of not less than three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

3. [*Documents and material*] The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to furnish, to the authority of the Contracting Party with which he has filed the subsequent application, any necessary information, document or material required for the purpose of the examination under Article 12, as required by the laws of that Contracting Party.

* UPOV 1991:
UPOV (1996) *International Convention for the Protection of New Varieties of Plants* of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, UPOV Publication No 221 (E), Geneva, 1996.

4. [*Events occurring during the period*] Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

Article 14
Scope of the Breeder's Right

1. [Acts in respect of the propagating material]

(a) Subject to Article 15 and Article 16, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

(i) production or reproduction (multiplication),
(ii) conditioning for the purpose of propagation,
(iii) offering for sale,
(iv) selling or other marketing,
(vi) exporting,
(vii) importing,
(viii) stocking for any of the purposes mentioned in (i) to (vi), above.

(b) The breeder may make his authorization subject to conditions and limitations.

2. [*Acts in respect of the harvested material*] Subject to Article 15 and Article 16, the acts referred to in items paragraph (1)(a)(i) to paragraph (1)(a)(vii) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

3. [*Acts in respect of certain products*] Each Contracting Party may provide that, subject to Article 15 and Article 16, the acts referred to in items paragraph (1)(a)(i) to paragraph (1)(a)(vii) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2) through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

4. [*Possible additional acts*] Each Contracting Party may provide that, subject to Article 15 and Article 16, acts other than those referred to in items paragraph (1)(a)(i) to paragraph (1)(a)(vii) shall also require the authorization of the breeder.

5. [*Essentially derived and certain other varieties*]

(a) The provisions of paragraph (1) to paragraph (4) shall also apply in relation to

(i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,

(ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and
(iii) varieties whose production requires the repeated use of the protected variety.

(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be essentially derived from another variety ("the initial variety") when

(i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
(ii) it is clearly distinguishable from the initial variety and
(iii) except for the differences, which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(c) Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 15
Exceptions to the Breeder's Right

1. [*Compulsory exceptions*] The breeder's right shall not extend to

(i) acts done privately and for non-commercial purposes,
(ii) acts done for experimental purposes and
(iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(5) apply, acts referred to in Article 14(1) to Article 14(4) in respect of such other varieties.

2. [*Optional exception*] Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article14 (5)(a)(i) or Article 14(5)(a)(ii).

Article 16
Exhaustion of the Breeder's Right

1. [*Exhaustion of right*] The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 14(5), which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Contracting Party concerned, or any material derived from the said material, unless such acts

(i) involve further propagation of the variety in question or

(ii) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

2. [*Meaning of "material"*] For the purposes of paragraph (1), "material" means, in relation to a variety,

(i) propagating material of any kind,
(ii) harvested material, including entire plants and parts of plants, and
(iii) any product made directly from the harvested material.

3. [*"Territory" in certain cases*] For the purposes of paragraph (1), all the Contracting Parties which are member States of one and the same intergovernmental organization may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

Article 17
Restrictions on the Exercise of the Breeder's Right

1. [*Public interest*] Except where expressly provided in this Convention, no Contracting Party may restrict the free exercise of a breeder's right for reasons other than of public interest.

2. [*Equitable remuneration*] When any such restriction has the effect of authorizing a third party to perform any act for which the breeder's authorization is required, the Contracting Party concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

Article 18
Measures Regulating Commerce

The breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Convention.

Article 19
Duration of the Breeder's Right

1. [*Period of protection*] The breeder's right shall be granted for a fixed period.

2. [Minimum period] The said period shall not be shorter than 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall not be shorter than 25 years from the said date.

* * *

5. United Nations Convention on the Law of the Sea*

Prompted by the desire to settle, in a spirit of mutual understanding and co-operation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world;

Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole;

Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.

Article 62
Utilization of the living resources

4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, *inter alia*, to the following:

(a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
(i) terms and conditions relating to joint ventures or other co-operative arrangements;
(j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research.

Article 143
Marine scientific research

3. States Parties may carry out marine scientific research in the Area. States Parties shall promote international co-operation in marine scientific research in the Area by:

(a) participating in international programmes and encouraging co-operation in marine scientific research by personnel of different countries and of the Authority;

* Law of the Sea (1982):
International Legal Materials, Volume 21, Number 5, September 1982; and
<http://www.un.org/Depts/los/los_docs.htm>

(b) ensuring that programmes are developed through the Authority or other international organizations as appropriate for the benefit of developing States and technologically less developed States with a view to:

(i) strengthening their research capabilities;
(ii) training their personnel and the personnel of the Authority in the techniques and applications of research;
(iii) fostering the employment of their qualified personnel in research in the Area;

(c) effectively disseminating the results of research and analysis when available, through the Authority or other international channels when appropriate.

Article 144
Transfer of technology

1. The Authority shall take measures in accordance with this Convention:

(a) to acquire technology and scientific knowledge relating to activities in the Area; and
(b) to promote and encourage the transfer to developing States of such technology and scientific knowledge so that all States Parties benefit therefrom.

2. To this end the Authority and States Parties shall co-operate in promoting the transfer of technology and scientific knowledge relating to activities in the Area so that the Enterprise and all States Parties may benefit therefrom. In particular they shall initiate and promote:

(a) programmes for the transfer of technology to the Enterprise and to developing States with regard to activities in the Area, including, *inter alia*, facilitating the access of the Enterprise and of developing States to the relevant technology, under fair and reasonable terms and conditions;
(b) measures directed towards the advancement of the technology of the Enterprise and the domestic technology of developing States, particularly by providing opportunities to personnel from the Enterprise and from developing States for training in marine science and technology and for their full participation in activities in the Area.

Article 266
Promotion of the development and transfer of marine technology

1. States, directly or through competent international organizations, shall co-operate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions.

2. States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, including land-locked and geographically disadvantaged States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific

research and other activities in the marine environment compatible with this Convention, with a view to accelerating the social and economic development of the developing States.

3. States shall endeavour to foster favourable economic and legal conditions for the transfer of marine technology for the benefit of all parties concerned on an equitable basis.

Article 267
Protection of legitimate interests

States, in promoting co-operation pursuant to Article 266, shall have due regard for all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of marine technology.

Article 268
Basic objectives

States, directly or through competent international organizations, shall promote:

(a) the acquisition, evaluation and dissemination of marine technological knowledge and facilitate access to such information and data;
(b) the development of appropriate marine technology;
(c) the development of the necessary technological infrastructure to facilitate the transfer of marine technology;
(d) the development of human resources through training and education of nationals of developing States and countries and especially the nationals of the least developed among them;
(e) international co-operation at all levels, particularly at the regional, subregional and bilateral levels.

Article 269
Measures to achieve the basic objectives

In order to achieve the objectives referred to in Article 268,States, directly or through competent international organizations, shall endeavour, *inter alia*, to:

(a) establish programmes of technical co-operation for the effective transfer of all kinds of marine technology to States which may need and request technical assistance in this field, particularly the developing land-locked and geographically disadvantaged States, as well as other developing States which have not been able either to establish or develop their own technological capacity in marine science and in the exploration and exploitation of marine resources or to develop the infrastructure of such technology;
(b) promote favourable conditions for the conclusion of agreements, contracts and other similar arrangements, under equitable and reasonable conditions;
(c) hold conferences, seminars and symposia on scientific and technological subjects, in particular on policies and methods for the transfer of marine technology;
(d) promote the exchange of scientists and of technological and other experts;
(e) undertake projects and promote joint ventures and other forms of bilateral and multilateral co-operation.

Article 270
Ways and means of international co-operation

International co-operation for the development and transfer of marine technology shall be carried out, where feasible and appropriate, through existing bilateral, regional or multilateral programmes, and also through expanded and new programmes in order to facilitate marine scientific research, the transfer of marine technology, particularly in new fields, and appropriate international funding for ocean research and development.

Article 271
Guidelines, criteria and standards

States, directly or through competent international organizations, shall promote the establishment of generally accepted guidelines, criteria and standards for the transfer of marine technology on a bilateral basis or within the framework of international organizations and other fora, taking into account, in particular, the interests and needs of developing States.

Article 272
Co-ordination of international programmes

In the field of transfer of marine technology, States shall endeavour to ensure that competent international organizations coordinate their activities, including any regional or global programmes, taking into account the interests and needs of developing States, particularly land-locked and geographically disadvantaged States.

Article 273
Co-operation with international organizations and the Authority

States shall co-operate actively with competent international organizations and the Authority to encourage and facilitate the transfer to developing States, their nationals and the Enterprise of skills and marine technology with regard to activities in the Area.

Article 274
Objectives of the Authority

Subject to all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of technology, the Authority, with regard to activities in the Area, shall ensure that:

(a) on the basis of the principle of equitable geographical distribution, nationals of developing States, whether coastal, land-locked or geographically disadvantaged, shall be taken on for the purposes of training as members of the managerial, research and technical staff constituted for its undertakings;
(b) the technical documentation on the relevant equipment, machinery, devices and processes is made available to all States, in particular developing States which may need and request technical assistance in this field;
(c) adequate provision is made by the Authority to facilitate the acquisition of technical assistance in the field of marine technology by States which may need

and request it, in particular developing States, and the acquisition by their nationals of the necessary skills and know-how, including professional training;

(d) States which may need and request technical assistance in this field, in particular developing States, are assisted in the acquisition of necessary equipment, processes, plant and other technical know-how through any financial arrangements provided for in this Convention.

Article 275
Establishment of national centres

1. States, directly or through competent international organizations and the Authority, shall promote the establishment, particularly in developing coastal States, of national marine scientific and technological research centres and the strengthening of existing national centres, in order to stimulate and advance the conduct of marine scientific research by developing coastal States and to enhance their national capabilities to utilize and preserve their marine resources for their economic benefit.

2. States, through competent international organizations and the Authority, shall give adequate support to facilitate the establishment and strengthening of such national centres so as to provide for advanced training facilities and necessary equipment, skills and know-how as well as technical experts to such States which may need and request such assistance.

Article 276
Establishment of regional centres

1. States, in co-ordination with the competent international organizations, the Authority and national marine scientific and technological research institutions, shall promote the establishment of regional marine scientific and technological research centres, particularly in developing States, in order to stimulate and advance the conduct of marine scientific research by developing States and foster the transfer of marine technology.

2. All States of a region shall co-operate with the regional centres therein to ensure the more effective achievement of their objectives.

Article 277
Functions of regional centres

The functions of such regional centres shall include, *inter alia*:

(a) training and educational programmes at all levels on various aspects of marine scientific and technological research, particularly marine biology, including conservation and management of living resources, oceanography, hydrography, engineering, geological exploration of the sea-bed, mining and desalination technologies;
(b) management studies;
(c) study programmes related to the protection and preservation of the marine environment and the prevention, reduction and control of pollution;
(d) organization of regional conferences, seminars and symposia;

(e) acquisition and processing of marine scientific and technological data and information;
(f) prompt dissemination of results of marine scientific and technological research in readily available publications;
(g) publicizing national policies with regard to the transfer of marine technology and systematic comparative study of those policies;
(h) compilation and systematization of information on the marketing of technology and on contracts and other arrangements concerning patents;

(i) technical co-operation with other States of the region.

Annex III. Basic Conditions of Prospecting, Exploration and Exploitation

Article 5
Transfer of technology

1. When submitting a plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, and other relevant non-proprietary information about the characteristics of such technology and information as to where such technology is available.

2. Every operator shall inform the Authority of revisions in the description and information made available pursuant to paragraph 1 whenever a substantial technological change or innovation is introduced.

3. Every contract for carrying out activities in the Area shall contain the following undertakings by the contractor:

(a) to make available to the Enterprise on fair and reasonable commercial terms and conditions, whenever the Authority so requests, the technology which he uses in carrying out activities in the Area under the contract, which the contractor is legally entitled to transfer. This shall be done by means of licences or other appropriate arrangements which the contractor shall negotiate with the Enterprise and which shall be set forth in a specific agreement supplementary to the contract. This undertaking may be invoked only if the Enterprise finds that it is unable to obtain the same or equally efficient and useful technology on the open market on fair and reasonable commercial terms and conditions;
(b) to obtain a written assurance from the owner of any technology used in carrying out activities in the Area under the contract, which is not generally available on the open market and which is not covered by subparagraph (a), that the owner will, whenever the Authority so requests, make that technology available to the Enterprise under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, to the same extent as made available to the contractor. If this assurance is not obtained, the technology in question shall not be used by the contractor in carrying out activities in the Area;
(c) to acquire from the owner by means of an enforceable contract, upon the request of the Enterprise and if it is possible to do so without substantial cost to the contractor, the legal right to transfer to the Enterprise any technology used by the contractor, in carrying out activities in the Area under the contract, which the contractor is otherwise not legally entitled to transfer and which is not generally

available on the open market. In cases where there is a substantial corporate relationship between the contractor and the owner of the technology, the closeness of this relationship and the degree of control or influence shall be relevant to the determination whether all feasible measures have been taken to acquire such a right. In cases where the contractor exercises effective control over the owner, failure to acquire from the owner the legal right shall be considered relevant to the contractor's qualification for any subsequent application for approval of a plan of work;

(d) to facilitate, upon the request of the Enterprise, the acquisition by the Enterprise of any technology covered by subparagraph under licence or other appropriate arrangements and on fair and reasonable commercial terms and conditions, if the Enterprise decides to negotiate directly with the owner of the technology;

(e) to take the same measures as are prescribed in subparagraphs (a), (b), (c) and (d) for the benefit of a developing State or group of developing States which has applied for a contract under Article 9 of this Annex, provided that these measures shall be limited to the exploitation of the part of the area proposed by the contractor which has been reserved pursuant to Article 8 of this Annex and provided that activities under the contract sought by the developing State or group of developing States would not involve transfer of technology to a third State or the nationals of a third State. The obligation under this provision shall only apply with respect to any given contractor where technology has not been requested by the Enterprise or transferred by that contractor to the Enterprise.

4. Disputes concerning undertakings required by paragraph 3, like other provisions of the contracts, shall be subject to compulsory settlement in accordance with Part XI and, in cases of violation of these undertakings, suspension or termination of the contract or monetary penalties may be ordered in accordance with Article 18 of this Annex. Disputes as to whether offers made by the contractor are within the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. If the finding is that the offer made by the contractor is not within the range of fair and reasonable commercial terms and conditions, the contractor shall be given 45 days to revise his offer to bring it within that range before the Authority takes any action in accordance with Article 18 of this Annex.

5. If the Enterprise is unable to obtain on fair and reasonable commercial terms and conditions appropriate technology to enable it to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

6. In the case of joint ventures with the Enterprise, transfer of technology will be in accordance with the terms of the joint venture agreement.

7. The undertakings required by paragraph 3 shall be included in each contract for the carrying out of activities in the Area until 10 years after the commencement of commercial production by the Enterprise, and may be invoked during that period.

8. For the purposes of this Article, "technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

* * *

6. The Vienna Convention for the Protection of the Ozone Layer*

Aware of the potentially harmful impact on human health and the environment through modification of the ozone layer,

Taking into account the circumstances and particular requirements of developing countries,

Aware that measures to protect the ozone layer from modifications due to human activities require international co-operation and action, and should be based on relevant scientific and technical considerations,

Aware also of the need for further research and systematic observations to further develop scientific knowledge of the ozone layer and possible adverse effects resulting from its modification.

Article 1
Definitions

For the purposes of this Convention:

3. "Alternative technologies or equipment" means technologies or equipment the use of which makes it possible to reduce or effectively eliminate emissions of substances which have or are likely to have adverse effects on the ozone layer.

7. "Protocols" means protocols to this Convention.

Article 2
General obligations

1. The Parties shall take appropriate measures in accordance with the provisions of this Convention and of those protocols in force to which they are party to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer.

2. To this end the Parties shall, in accordance with the means at their disposal and their capabilities:

(a) co-operate by means of systematic observations, research and information exchange in order to better understand and assess the effects on human health and the environment from modification of the ozone layer;

[…]

4. The application of this Article shall be based on relevant scientific and technical considerations.

* The Vienna Convention (1985):
International Legal Materials, Volume 26, Number 6, November 1987; and
<http://www.unep.org/ozone/Handbook2000-part1>

Article 3
Research and systematic observations

1. The Parties undertake, as appropriate, to initiate and co-operate in, directly or through competent international bodies, the conduct of research and scientific assessments on:

(a) The physical and chemical processes that may affect the ozone layer;
(b) The human health and other biological effects deriving from any modifications of the ozone layer, particularly those resulting from changes in ultra-violet solar radiation having biological effects (UV-B);
(c) Climatic effects deriving from any modifications of the ozone layer;
(d) Effects deriving from any modifications of the ozone layer and any consequent change in UV-B radiation on natural and synthetic materials useful to mankind;
(e) Substances, practices, processes and activities that may affect the ozone layer, and their cumulative effects;
(f) Alternative substances and technologies;
(g) Related socio-economic matters; and as further elaborated in annexes I and II.

Article 4
Co-operation in the legal, scientific and technical fields

1. The Parties shall facilitate and encourage the exchange of scientific, technical, socio-economic, commercial and legal information relevant to this Convention as further elaborated in annex II. Such information shall be supplied to bodies agreed upon by the Parties. Any such body receiving information regarded as confidential by the supplying Party shall ensure that such information is not disclosed and shall aggregate it to protect its confidentiality before it is made available to all Parties.

2. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of the developing countries, in promoting, directly or through competent international bodies, the development and transfer of technology and knowledge. Such co-operation shall be carried out particularly through:

(a) Facilitation of the acquisition of alternative technologies by other Parties;
(b) Provision of information on alternative technologies and equipment, and supply of special manuals or guides to them;
(c) The supply of necessary equipment and facilities for research and systematic observations;
(d) Appropriate training of scientific and technical personnel.

Article 6
Conference of the Parties

4. The Conference of the Parties shall keep under continuous review the implementation of this Convention, and, in addition, shall:

(d) Adopt, in accordance with articles 3 and 4, programmes for research, systematic observations, scientific and technological co-operation, the exchange of information and the transfer of technology and knowledge;

Annex I: Research and systematic observations

3. The Parties to the Convention shall co-operate, taking into account the particular needs of the developing countries, in promoting the appropriate scientific and technical training required to participate in the research and systematic observations outlined in this annex. Particular emphasis should be given to the intercalibration of observational instrumentation and methods with a view to generating comparable or standardized scientific data sets.

Annex II: Information Exchange

1. The Parties to the Convention recognize that the collection and sharing of information is an important means of implementing the objectives of this Convention and of assuring that any actions that may be taken are appropriate and equitable. Therefore, Parties shall exchange scientific, technical, socio-economic, business, commercial and legal information.

2. The Parties to the Convention, in deciding what information is to be collected and exchanged, should take into account the usefulness of the information and the costs of obtaining it. The Parties further recognize that co-operation under this annex has to be consistent with national laws, regulations and practices regarding patents, trade secrets, and protection of confidential and proprietary information.

3. Scientific information. This includes information on:

(a) Planned and ongoing research, both governmental and private, to facilitate the co-ordination of research programmes so as to make the most effective use of available national and international resources;
(b) The emission data needed for research;
(c) Scientific results published in peer-reviewed literature on the understanding of the physics and chemistry of the earth's atmosphere and of its susceptibility to change, in particular on the state of the ozone layer and effects on human health, environment and climate which would result from changes on all time-scales in either the total column content or the vertical distribution of ozone;
(d) The assessment of research results and the recommendation for future research.

4. Technical information. This includes information on:

(a) The availability and cost of chemical substitutes and of alternative technologies to reduce the emissions of ozone-modifying substances and related planned and ongoing research;
(b) The limitations and any risks involved in using chemical or other substitutes and alternative technologies.

5. Socio-economic and commercial information on the substances referred to in annex I. This includes information on:

(a) Production and production capacity;
(b) Use and use patterns;
(c) Imports/exports;
(d) The costs, risks and benefits of human activities which may indirectly modify the ozone layer and of the impacts of regulatory actions taken or being considered to control these activities.

6. Legal information

This includes information on:

(a) National laws, administrative measures and legal research relevant to the protection of the ozone layer;
(b) International agreements, including bilateral agreements, relevant to the protection of the ozone layer;
(c) Methods and terms of licensing and availability of patents relevant to the protection of the ozone layer.

Decisions adopted by the Conferences of the Parties to the Vienna Convention in respect of each Article of the Convention.

Decision VCI/4: Research, observations and transfer of technology.

The Conference of the Parties, in Decision VCI/4 of its First Meeting, decided that the following activities shall be given priority in the research, observations and transfer of technology:

Article 3
Research and systematic observations

(a) The atmospheric impact of potential substitutes for the controlled substances particularly with regard to their likely ozone depletion potential and their greenhouse warming potential;
(b) Monitoring of the rarer trace gases in the troposphere and research on their interactions;
(c) The Global Ozone Observing System should be expanded particularly in the tropics and in the Southern hemisphere. Special attention must be paid to ozone monitoring in Polar regions. Nations should make a long-term commitment to such monitoring programmes including making sufficient resources available appropriate to the effective operation;
(d) Research on the human health and biological implications of ultraviolet radiation changes at the earth's surface. Particular attention must be given to the impact on

food production in the developing world and to development of crop varieties resistant to higher levels of ultraviolet radiation;

(e) Research into the effects on the atmosphere of potential ozone layer depleting gases, other than the controlled substances, for example methyl chloroform;

(f) Studies on the social and economic effects of ozone depletion.

Decision VCIII/2: Reports of the Assessment Panels

The Conference of the Parties, in Decision VCIII/2 of its Third Meeting, decided:

1. To take note of the 1991 reports of Scientific Assessment, Environmental Effects Assessment and Technology and Economic Assessment Panels;

2. To take note of the ongoing work of the three Assessment Panels in preparing updated reports for consideration by the Seventh Meeting of the Parties to the Montreal Protocol;

Decision VCI/5: Research capability of developing countries

The Conference of Parties, in Decision VCI/5 of its First Meeting, decided to co-operate to ensure the enhancement of the capability of developing countries to contribute to ozone science research. This may be facilitated through the organization of workshops and the identification of institutes in developed countries which can co-operate with appropriate scientific institutions in the developing countries. The identification of financial institutions who might assist the development of an improved scientific capability in developing countries should also be undertaken.

Decisions on Ozone Research Managers

Decision VCII/4: Recommendations of the Ozone Research Managers

The Conference of the Parties, in Decision VCII/4 of its Second Meeting, decided to note the outcome of the first meeting of the Ozone Research Managers (WMO Global Ozone Research and Monitoring Project Report No. 23) and, in accordance with the recommendations of that meeting:

(a) To request the Parties to the Convention to determine the ways and means to provide scientific and technical training in ozone monitoring and research and other relevant assistance especially to developing countries.

Decision VCII/9: Expansion of the Global Ozone Observing System Network

The Conference of the Parties, in Decision VCII/9 of its Second Meeting, decided to request the Parties to the Vienna Convention as a matter of urgency to facilitate through bilateral and multilateral contributions the expansion of the ozone observing stations network, in particular at locations selected on the basis of generally accepted scientific criteria which are in the territories of interested developing countries, and specifically to request:

(a) WMO and UNEP to keep Parties continually aware of specific network needs which could be met by bilateral or multilateral co-operation;

(b) developed countries to make voluntary contributions to the WMO Special Fund for Environmental Monitoring for GO3OS;

(c) developing countries to make ozone layer monitoring a priority in their requests for bilateral and multilateral assistance within the context of the Global Ozone Observing System.

* * *

7. Montreal Protocol on Substances that Deplete the Ozone Layer*

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations and bearing in mind the developmental needs of developing countries,

Acknowledging that special provision is required to meet the needs of developing countries, including the provision of additional financial resources and access to relevant technologies, bearing in mind that the magnitude of funds necessary is predictable, and the funds can be expected to make a substantial difference in the world's ability to address the scientifically established problem of ozone depletion and its harmful effects,

Considering the importance of promoting international co-operation in the research, development and transfer of alternative technologies relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries,

Article 5
Special situation of developing countries

1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances in Annex A is less than 0.3 kilograms per capita on the date of the entry into force of the Protocol for it, or any time thereafter until 1 January 1999, shall, in order to meet its basic domestic needs, be entitled to delay for ten years its compliance with the control measures set out in Articles 2A to 2E, provided that any further amendments to the adjustments or Amendment adopted at the Second Meeting of the Parties in London, 29 June 1990, shall apply to the Parties operating under this paragraph after the review provided for in paragraph 8 of this Article has taken place and shall be based on the conclusions of that review.

5. Developing the capacity to fulfil the obligations of the Parties operating under paragraph 1 of this Article to comply with the control measures set out in Articles 2A to 2E, and any control measures in Articles 2F to 2H that are decided pursuant to paragraph 1 bis of this Article, and their implementation by those same Parties will depend upon the effective implementation of the financial co-operation as provided by Article 10 and the transfer of technology as provided by Article 10A.

Article 9
Research, development, public awareness and exchange of information

1. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in

* The Montreal Protocol (1987):
International Legal Materials, Volume 26, Number 6, November 1987; and
<http://www.unep.org/ozone/mont_t.htm>

promoting, directly or through competent international bodies, research, development and exchange of information on:

(a) best technologies for improving the containment, recovery, recycling, or destruction of controlled substances or otherwise reducing their emissions;

(b) possible alternatives to controlled substances, to products containing such substances, and to products manufactured with them; and …

Article 10
Financial mechanism

1. The Parties shall establish a mechanism for the purposes of providing financial and technical co-operation, including the transfer of technologies, to Parties operating under paragraph 1 of Article 5 of this Protocol to enable their compliance with the control measures set out in Articles 2A to 2E, and any control measures in Articles 2F to 2H that are decided pursuant to paragraph 1 bis of Article 5 of the Protocol. The mechanism, contributions to which shall be additional to other financial transfers to Parties operating under that paragraph, shall meet all agreed incremental costs of such Parties in order to enable their compliance with the control measures of the Protocol. An indicative list of the categories of incremental costs shall be decided by the meeting of the Parties.

Article 10A
Transfer of technology

Each Party shall take every practicable step, consistent with the programmes supported by the financial mechanism, to ensure:

(a) that the best available, environmentally safe substitutes and related technologies are expeditiously transferred to Parties operating under paragraph 1 of Article 5; and
(b) that the transfers referred to in subparagraph (a) occur under fair and most favourable conditions.

* * *

8. Basel Convention on the control of Transboundary Movements of Hazardous Wastes and their Disposal*

Aware of the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good house-keeping and management systems with a view to reducing to a minimum the generation of hazardous wastes and other wastes;

Taking into account also the limited capabilities of the developing countries to manage hazardous wastes and other wastes;

Recognizing the need to promote the transfer of technology for the sound management of hazardous wastes and other wastes produced locally, particularly to the developing countries in accordance with the spirit of the Cairo Guidelines and decision 14/16 of the Governing Council of UNEP on Promotion of the transfer of environmental protection technology.

Article 4
General Obligations

2. Each Party shall take the appropriate measures to:

(a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;
(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;

Article 10
International Co-operation

1. The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.

* Basel Convention (1989):
UNEP (1999). *Basel convention on the control of transboundary movements of hazardous wastes and their disposal*, SBC No. 99/001 ; and <http://www.basel.int/text/con-e.htm>,

2. To this end, the Parties shall:

(a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;
(b) Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;
(c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;
(d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes.

They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;

(e) Co-operate in developing appropriate technical guidelines and/or codes of practice.

3. The Parties shall employ appropriate means to co-operate in order to assist developing countries in the implementation of subparagraphs a, b, c and d of paragraph 2 of Article 4.

4. Taking into account the needs of developing countries, co-operation between Parties and the competent international organizations is encouraged to promote, *inter alia*, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

Article 14
Financial Aspects

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. the Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.

* * *

9. Convention on Biological Diversity*

Acknowledging that the provision of new and additional financial resources and appropriate access to relevant technologies can be expected to make a substantial difference in the world's ability to address the loss of biological diversity,

Acknowledging further that special provision is required to meet the needs of developing countries, including the provision of new and additional financial resources and appropriate access to relevant technologies,

Noting in this regard the special conditions of the least developed countries and small island States,

Acknowledging that substantial investments are required to conserve biological diversity and that there is the expectation of a broad range of environmental, economic and social benefits from those investments,

Aware that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential.

Article 1
Objectives

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Article 16
Access to and Transfer of Technology

1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.

2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and, where

* CBD (1992):
International Legal Materials, Volume 31, Number 4, July 1992; and <http://www.unep.ch/bio/conv-e.html> and <http://www.biodiv.org/convention/articles.asp?lg=0>

necessary, in accordance with the financial mechanism established by Articles 20 and 21. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights. The application of this paragraph shall be consistent with paragraphs 3, 4 and 5 below.

3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that Contracting Parties, in particular those that are developing countries, which provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights, where necessary, through the provisions of Articles 20 and 21 and in accordance with international law and consistent with paragraphs 4 and 5 below.

4. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 above for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 above.

5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives.

Article 17
Exchange of Information

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

Article 18
Technical and Scientific Cooperation

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.

2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, *inter alia*, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and

strengthening of national capabilities, by means of human resources development and institution building.

3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.

4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

Article 19
Handling of Biotechnology and Distribution of its Benefits

1. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties.

2. Each Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.

3. The Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.

4. Each Contracting Party shall, directly or by requiring any natural or legal person under its jurisdiction providing the organisms referred to in paragraph 3 above, provide any available information about the use and safety regulations required by that Contracting Party in handling such organisms, as well as any available information on the potential adverse impact of the specific organisms concerned to the Contracting Party into which those organisms are to be introduced.

Article 20
Financial Resources

4. The extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by

developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.

5. The Parties shall take full account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology.

Article 25.
Subsidiary Body on Scientific, Technical and Technological Advice

1. A subsidiary body for the provision of scientific, technical and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely advice relating to the implementation of this Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the authority of and in accordance with guidelines laid down by the Conference of the Parties, and upon its request, this body shall:

(a) Provide scientific and technical assessments of the status of biological diversity;

(b) Prepare scientific and technical assessments of the effects of types of measures taken in accordance with the provisions of this Convention;

(c) Identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of biological diversity and advise on the ways and means of promoting development and/or transferring such technologies;

(d) Provide advice on scientific programmes and international cooperation in research and development related to conservation and sustainable use of biological diversity; and

(e) Respond to scientific, technical, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions, terms of reference, organization and operation of this body may be further elaborated by the Conference of the Parties.

* * *

10. Cartagena Protocol on Biosafety to the Convention on Biological Diversity*

Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development,

Aware of the rapid expansion of modern biotechnology and the growing public concern over its potential adverse effects on biological diversity, taking also into account risks to human health,

Recognizing that modern biotechnology has great potential for human well-being if developed and used with adequate safety measures for the environment and human health,

Article 20
Information sharing and the Biosafety Clearing-House

1. A Biosafety Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention, in order to:

(a) Facilitate the exchange of scientific, technical, environmental and legal information on, and experience with, living modified organisms; and

Article 22
Capacity-building

1. The Parties shall cooperate in the development and/or strengthening of human resources and institutional capacities in biosafety, including biotechnology to the extent that it is required for biosafety, for the purpose of the effective implementation of this Protocol, in developing country Parties, in particular the least developed and small island developing States among them, and in Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations and, as appropriate, through facilitating private sector involvement.

2. For the purposes of implementing paragraph 1 above, in relation to cooperation, the needs of developing country Parties, in particular the least developed and small island developing States among them, for financial resources and access to and transfer of technology and know-how in accordance with the relevant provisions of the Convention, shall be taken fully into account for capacity-building in biosafety. Cooperation in capacity-building shall, subject to the different situation, capabilities and requirements of each Party, include scientific and technical training in the proper and safe management of biotechnology, and in the use of risk assessment and risk management for biosafety, and the enhancement of technological and institutional capacities in biosafety. The needs of Parties with economies in transition shall also be taken fully into account for such capacity-building in biosafety.

* * *

* Cartagena Protocol (2000):
International Legal Materials, Volume 39, Number 5, September 2000; and <http://www.biodiv.org>.

11. Convention on the Transboundary Effects of Industrial Accidents*

Affirming the need to promote active international cooperation among the States concerned before, during and after an accident, to enhance appropriate policies and to reinforce and coordinate action at all appropriate levels for promoting the prevention of, preparedness for and response to the transboundary effects of industrial accidents,

Article 15
Exchange of information

The Parties shall, at the multilateral or bilateral level, exchange reasonably obtainable information, including the elements contained in Annex`XI hereto.

Article 16
Exchange of technology

1. The Parties shall, consistent with their laws, regulations and practices, facilitate the exchange of technology for the prevention of, preparedness for and response to the effects of industrial accidents, particularly through the promotion of:

(a) Exchange of available technology on various financial bases;
(b) Direct industrial contacts and cooperation;
(c) Exchange of information and experience;
(d) Provision of technical assistance.

2. In promoting the activities specified in paragraph 1, subpararagraphs (a) to (d) of this Article, the Parties shall create favourable conditions by facilitating contacts and cooperation among appropriate organizations and individuals in both the private and the public sectors that are capable of providing technology, design and engineering services, equipment or finance.

ANNEX XI
EXCHANGE OF INFORMATION PURSUANT TO ARTICLE 15

Information shall include the following elements, which can also be the subject of multilateral and bilateral cooperation:
[…]

(c) Programmes for monitoring, planning, research and development, including their implementation and surveillance;

[…]

(f) The development and application of the best available technologies for improved environmental protection and safety;

* * *

* Industrial Accidents Convention (1992):
International Legal Materials, Volume 31, Number 6, November 1992; and
<http://www.unece.org/env/teia/english/text.htm> and <http://www.unece.org/leginstr/cover.htm>

12. United Nations Framework Convention on Climate Change*

Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Article 4
Commitments

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

(c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;

(h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;

(i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non- governmental organizations; and

4. The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

* Climate Change (1992):
International Legal Materials, Volume 31, Number 4, July 1992; and
<http://www.unfccc.de/resource/convkp.html>

5. The developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

8. In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

(a) Small island countries;
(b) Countries with low-lying coastal areas;
(c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;
(d) Countries with areas prone to natural disasters;
(e) Countries with areas liable to drought and desertification;
(f) Countries with areas of high urban atmospheric pollution;
(g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
(h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and

(i) Land-locked and transit countries.

Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.

9. The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.

10. The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive

products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

Article 5
Research and Systematic Observation

In carrying out their commitments under Article 4, paragraph 1(g), the Parties shall:
[…]

(b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and

(c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

Article 9
S*ubsidiary body for scientific and technological advice*

1. A subsidiary body for scientific and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific and technological matters relating to the Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:

(a) provide assessments of the state of scientific knowledge relating to climate change and its effects;(b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;

(b) identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;

(d) provide advice on scientific programmes, international cooperation in research and development related to climate change, as well as on ways and means of supporting endogenous capacity-building in developing countries; and

(e) respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.

Article 11
Financial mechanism

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. Its operation shall be entrusted to one or more existing international entities.

2. The financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.

5. The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.

* * *

13. Kyoto Protocol to the United Nations Framework Convention on Climate Change*

Article 10

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

(a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:

(i) Such programmes would, *inter alia*, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and

(ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;

(c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in

* Kyoto Protocol (1992):
International Legal Materials, Volume 37, Number 1, January 1998; and
<http://www.unfccc.de/resource/convkp.html> and <http://untreaty.un.org/English/notpubl/kyoto-en.htm>

particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;

(d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;

(e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account Article 6 of the Convention;

(f) Include in their national communications information on programmes and activities undertaken pursuant to this Article in accordance with relevant decisions of the Conference of the Parties; and

(g) Give full consideration, in implementing the commitments under this Article, to Article 4, paragraph 8, of the Convention.

Article 11

1. In the implementation of Article 10, Parties shall take into account the provisions of Article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.

2. In the context of the implementation of Article 4, paragraph 1, of the Convention, in accordance with the provisions of Article 4, paragraph 3, and Article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in Annex II to the Convention shall:

(a) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under Article 4, paragraph 1(a), of the Convention that are covered in Article 10, subparagraph (a); and

(b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs

of advancing the implementation of existing commitments under Article 4, paragraph 1, of the Convention that are covered by Article 10 and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention, in accordance with that Article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply *mutatis mutandis* to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in Annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of Article 10, through bilateral, regional and other multilateral channels.

* * *

14. United Nations Conference on Environment and Development: Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests*

8. (a) Efforts should be undertaken towards the greening of the world. All countries, notably developed countries, should take positive and transparent action towards reforestation, afforestation and forest conservation, as appropriate.

(g) Access to biological resources, including genetic material, shall be with due regard to the sovereign rights of the countries where the forests are located and to the sharing on mutually agreed terms of technology and profits from biotechnology products that are derived from these resources.

11. In order to enable, in particular, developing countries to enhance their endogenous capacity and to better manage, conserve and develop their forest resources, the access to and transfer of environmentally sound technologies and corresponding know-how on favourable terms, including on concessional and preferential terms, as mutually agreed, in accordance with the relevant provisions of Agenda 21, should be promoted, facilitated and financed, as appropriate.

* * *

* Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (1992):
International Legal Materials, Volume 31, Number 4, July 1992

15. United Nations Conference on Environment and Development: Rio Declaration on Environment and Development*

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

[…]

Principle 9

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

* * *

* Rio Declaration on Environment and Development (1992): *International Legal Materials*, Volume 31, Number 4, July 1992.

16. Establishment Agreement for the Center for International Forestry Research*

Article 4
Purpose

1. The purpose of the Center is to contribute to the sustained well-being of people in developing countries, particularly in the tropics, through collaborative strategic and applied research and related activities in forest systems and forestry, and by promoting the transfer of appropriate new technologies and the adoption of new methods of social organization, for national development.

2. By "forestry" is meant the science, the art and the practice of managing and using for human benefit the natural resources that occur on and in association with lands bearing forest or with a forest vocation. A "forest system" is a functional complex of forest and its biophysical, social, cultural, economic and political environment.
[…]

(d) A recognition that research must remain relevant to and serve the needs of developing countries in their efforts to achieve sustainable land-use practices, minimise further degradation of forested lands and promote social equity.

Article 6
Activities

2. CIFOR shall formulate a research program to underpin the science of forestry, by developing and maintaining the necessary scientific and technological base and the necessary staff expertise. This program shall be directed towards innovation and technology development and the transfer of the results of such work to CIFOR's stakeholders for the ultimate benefit of people in developing countries.

3. CIFOR shall operate through a variety of mechanisms suited to the needs of its constituent programs, including networking, collaborative and contractual arrangements, and in-house research.

4. CIFOR shall monitor forestry research globally and shall obtain and process information relevant to developing countries. CIFOR shall act as a distributor of this information where and when it is needed.

* * *

* Agreement for the Center for International Forestry Research (1993):
Center for International Forestry Research (CIFOR); TIAS 11960, 1993 U.S.T. LEXIS 16, March 5, 1993.

17. The Energy Charter Treaty*

Determined progressively to remove technical, administrative and other barriers to trade in Energy Materials and Products and related equipment, technologies and services;

Article 8
Transfer of Technology

1. The Contracting Parties agree to promote access to and transfer of energy technology on a commercial and non-discriminatory basis to assist effective trade in Energy Materials and Products and Investment and to implement the objectives of the Charter subject to their laws and regulations, and to the protection of Intellectual Property rights.

2. Accordingly, to the extent necessary to give effect to paragraph (1) the Contracting Parties shall eliminate existing and create no new obstacles to the transfer of technology in the field of Energy Materials and Products and related equipment and services, subject to non-proliferation and other international obligations.

Article 19
Environmental Aspects

1. In pursuit of sustainable development and taking into account its obligations under those international agreements concerning the environment to which it is party, each Contracting Party shall strive to minimize in an economically efficient manner harmful Environmental Impacts occurring either within or outside its Area from all operations within the Energy Cycle in its Area, taking proper account of safety. In doing so each Contracting Party shall act in a Cost-Effective manner. In its policies and actions each Contracting Party shall strive to take precautionary measures to prevent or minimize environmental degradation. The Contracting Parties agree that the polluter in the Areas of Contracting Parties, should, in principle, bear the cost of pollution, including transboundary pollution, with due regard to the public interest and without distorting Investment in the Energy Cycle or international trade. Contracting Parties shall accordingly:

(d) have particular regard to Improving Energy Efficiency, to developing and using renewable energy sources, to promoting the use of cleaner fuels and to employing technologies and technological means that reduce pollution;
(e) promote the collection and sharing among Contracting Parties of information on environmentally sound and economically efficient energy policies and Cost-Effective practices and technologies;

* The Energy Charter Treaty (1994):
The Energy Charter Conference (1995). *Final Act of the European Energy Charter Conference* (Document AF/FECH/en 1); *The Energy Charter Treaty* (Document EECH/A2/en 1); and <http://www.encharter.org/English/FullText/Treaty.html>

(g) promote and co-operate in the research, development and application of energy efficient and environmentally sound technologies, practices and processes which will minimize harmful Environmental Impacts of all aspects of the Energy Cycle in an economically efficient manner;

(h) encourage favourable conditions for the transfer and dissemination of such technologies consistent with the adequate and effective protection of Intellectual Property right;

* * *

18. General Agreement on Trade in Services*

Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Article IV
Increasing Participation of Developing Countries

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:

(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;
(b) the improvement of their access to distribution channels and information networks; and
(c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

(a) commercial and technical aspects of the supply of services;
(b) registration, recognition and obtaining of professional qualifications; and
(c) the availability of services technology.

3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

Article XIX
Negotiation of Specific Commitments

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to

* GATS (1994):
GATT /WTO (1994). *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts*, Sales No. GATT/1994/4, (Geneva: GATT secretariat); and
<http://www.wto.org/english/docs_e/legal_e/final_e.htm >

their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. ? ? ?

Article XXV

Technical Cooperation

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.

2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

?

Annex on Telecommunications

6. *Technical Cooperation*

(a) Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.

(b) Members shall encourage and support telecommunications cooperation among developing countries at the international, regional and sub-regional levels.

(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

(d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

* * *

19. Agreement on the Application of Sanitary and Phytosanitary Measures*

Recognizing the important contribution that international standards, guidelines and recommendations can make in this regard;

Article 9
Technical Assistance

1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.

* * *

* Sanitary and Phytosanitary Measures (1994):
GATT /WTO (1994). *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts*, Sales No. GATT/1994/4, (Geneva: GATT secretariat); and
<http://www.wto.org/english/docs_e/legal_e/final_e.htm>

20. Agreement on Subsidies and Countervailing Measures*

Article 1
Definition of a Subsidy

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a) (1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits) [1];
(iii) a government provides goods or services other than general infrastructure, or purchases goods;
(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

(a) (2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and
(b) a benefit is thereby conferred.

1.2 A subsidy as defined in paragraph 1 shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V only if such a subsidy is specific in accordance with the provisions of Article 2.

Article 2
Specificity

2.1 In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply:

* Subsidies and Countervailing Measures (1994):
GATT /WTO (1994). *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts*, Sales No. GATT/1994/4, (Geneva: GATT secretariat)

[1] In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions[2] governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

(c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.[3] In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

2.2 A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.

2.3 Any subsidy falling under the provisions of Article 3 shall be deemed to be specific.

2.4 Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

Article 8

Identification of Non-Actionable Subsidies

8.1 The following subsidies shall be considered as non-actionable:

(a) subsidies which are not specific within the meaning of Article 2;

(b) subsidies which are specific within the meaning of Article 2 but which meet all of the conditions provided for in paragraphs 2(a), 2(b) or 2(c) below.

[2]Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.

[3]In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.

8.2 Notwithstanding the provisions of Parts III and V, the following subsidies shall be non-actionable:

(a) assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms if: the assistance covers not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity, and provided that such assistance is limited exclusively to:

(i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);
(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;
(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought in research, technical knowledge, patents, etc.;
(iv) additional overhead costs incurred directly as a result of the research activity;
(v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

(b) assistance to disadvantaged regions within the territory of a Member given pursuant to a general framework of regional development and non-specific (within the meaning of Article 2) within eligible regions provided that:

(i) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;
(ii) the region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;
(iii) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:
(iv) one of either income per capita or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory concerned;
(v) unemployment rate, which must be at least 110 per cent of the average for the territory concerned;
(vi) as measured over a three year period; such measurement, however, may be a composite one and may include other factors.

(c) assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, provided that the assistance:

(i) is a onetime nonrecurring measure; and
(ii) is limited to 20 per cent of the cost of adaptation; and
(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and
(iv) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and
(v) is available to all firms which can adopt the new equipment and/or production processes.

* * *

21. Agreement on Trade-Related Investment Measures *

Taking into account the particular trade, development and financial needs of developing country Members, particularly those of the least-developed country Members.

Article 4
Developing Country Members

A developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, the Understanding on the Balance-of-Payments Provisions of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Articles III and XI of GATT 1994.

Annex
Illustrative List

1. TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

(a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or
(b) that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.

2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

* TRIMs (1994):
GATT /WTO (1994). *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts*, Sales No. GATT/1994/4, (Geneva: GATT secretariat).

(a) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;
(b) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or
(c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

1. In the case of TRIMs applied under discretionary authority, each specific application shall be notified. Information that would prejudice the legitimate commercial interests of particular enterprises need not be disclosed.

* * *

22. Agreement on Trade-related Aspects of Intellectual Property Rights *

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;
(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;
(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;
(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and
(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:

* TRIPS (1994):
GATT /WTO (1994). *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts*, Sales No. GATT/1994/4, (Geneva: GATT secretariat); and
<http://www.wto.org/english/docs_e/legal_e/final_e.htm>

PART I

GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1
Nature and Scope of Obligations

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.[4] In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.[5] Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

Article 2
Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

[4]When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

[5]In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

Article 3
National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection[6] of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4
Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;
(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;
(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;
(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

[6]For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

Article 5
Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6
Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7
Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8
Principles

1. Members may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

Section 1: Copyright and Related Rights

Article 9
Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6*bis* of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10
Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. 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. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11
Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12
Term of Protection

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 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13
Limitations and Exceptions

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

Article 14
Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the

fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

Section2: Trademarks

Article 15
Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. 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.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16
Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner?s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In 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 existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6*bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17
Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18
Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19
Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20
Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21
Licensing and Assignment

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

Section 3: Geographical Indications

Article 22
Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23
Additional Protection for Geographical Indications for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.[7]

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24
International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral

[7]Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (*a*) for at least 10 years preceding 15 April 1994 or (*b*) in good faith preceding that date.

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

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by

that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person?s name or the name of that person?s predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

Section 4: Industrial Designs

Article 25
Requirements for Protection

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

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

Article 26
Protection

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

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

Section 5: Patents

Article 27
Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3 below, patents shall be available for any inventions, whether products or processes, in all fields of technology,

provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28
Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing[8] for these purposes that product;
(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29
Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

[8]This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30
Exceptions to Rights Conferred

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

Article 31
Other use without authorization of the Right Holder.

Where the law of a Member allows for other use[9] 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 has 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 Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
(d) such use shall be non-exclusive;
(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member 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;

[9] "Other use" refers to use other than that allowed under Article 30.

(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 Member;

(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 Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (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 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-licence 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 32
Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33
Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.[10]

[10]It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

Article 34
Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;
(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

Section 6: Layout-Designs (Topographies) of Integrated Circuits

Article 35
Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36
Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:[11] importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an Article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

[11]The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

Article 37
Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any Article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or Article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38
Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

Section 7: Protection of Undisclosed Information

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[12] so long as such information:

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

(a) 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 within the circles that normally deal with the kind of information in question;
(b) has commercial value because it is secret; and
(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

Section 8: Control of Anti-competitive Practices in Contractual Licences

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their national legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grant-back conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall co-operate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for

consultations by the other Member under the same conditions as those foreseen in paragraph 3 above.

PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Section 1: General Obligations

Article 41

1 Members shall ensure that enforcement procedures as specified in this Part are available under their 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 infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time- limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding 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.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in national laws concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws in general, nor does it affect the capacity of Members to enforce their laws in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of laws in general.

Section 2: Civil and Administrative Procedures and Remedies

Article 42
Fair and Equitable Procedures

Members shall make available to right holders[13] civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly 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, unless this would be contrary to existing constitutional requirements.

Article 43
Evidence

1. The judicial authorities shall have 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.

2. 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 Member may 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.

Article 44
Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with

[13]For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45
Damages

1. The judicial authorities shall have 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 that person?s intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46
Other Remedies

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

Article 47
Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48
Indemnification of the Defendant

1. The judicial authorities shall have 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. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49
Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

Section 3: Provisional Measures

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) 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 immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, 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.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant?s right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, 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.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 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, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, 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.

8. 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 this Section.

Section 4: Special Requirements Related to Border Measures[14]

Article 51
Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures[15] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods[16] may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

[14]Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[15]It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[16]For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made

Article 52
Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder?s intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53
Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54
Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Article 55
Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56
Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57
Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder?s claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58
Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59
Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60
De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

Section 5: Criminal Procedures

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED *INTER-PARTES* PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2-6 of Part II of this Agreement, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or

registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply mutatis mutandis to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where the national law provides for such procedures, administrative revocation and inter parties procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 above shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V

DISPUTE PREVENTION AND SETTLEMENT

Article 63
Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64
Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI

TRANSITIONAL ARRANGEMENTS

Article 65
Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4 below, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the Agreement Establishing the WTO.

2. Any developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1 above, of the provisions of this Agreement other than Articles 3, 4 and 5 of Part I.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws, may also benefit from a period of delay as foreseen in paragraph 2 above.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2

above, it may delay the application of the provisions on product patents of Section 5 of Part II of this Agreement to such areas of technology for an additional period of five years.

5. Any Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 above shall ensure that any changes in its domestic laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66
Least-Developed Country Members

1. In view of their special needs and requirements, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, least- developed country Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65 above. The Council shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67
Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of domestic legislation on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII

INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 68
Council for Trade-Related Aspects of Intellectual Property Rights

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69
International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70
Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4 below, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the Agreement Establishing the WTO by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of the Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the Agreement Establishing the WTO patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI above, provide as from the date of entry into force of the Agreement Establishing the WTO a means by which applications for patents for such inventions can be filed;
(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application;
(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in sub-paragraph (ii) above.

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(i) above, exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI above, for a period of five years after obtaining market approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the Agreement Establishing the WTO, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71
Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72
Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73
Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;

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

(ii) 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;

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

(c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

* * *

23. Agreement on Technical Barriers to Trade*

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for assessment of conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

Article 11
Technical Assistance to Other Members

11.1 Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations.

11.2 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies, and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.

11.3 Members shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding:

11.3.1 the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations; and

11.3.2 the methods by which their technical regulations can best be met.

11.4 Members shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Member.

11.5 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the steps that should be taken by their producers if they wish to have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Member receiving the request.

* Technical Barriers to Trade (1994):
GATT /WTO (1994). *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts*, Sales No. GATT/1994/4, (Geneva: GATT secretariat); and
<http://www.wto.org/english/docs_e/legal_e/final_e.htm> and
<http://www.wto/englis h/tratop_e/tbt_e/tbtagr.htm>

11.6 Members which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.

11.7 Members shall, if so requested, encourage bodies within their territories which are members or participants of international or regional systems for conformity assessment to advise other Members, especially the developing country Members, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.

11.8 In providing advice and technical assistance to other Members in terms of paragraphs 1 to 7, Members shall give priority to the needs of the least-developed country Members.

Article 12
Special and Differential Treatment of Developing Country Members

12.1 Members shall provide differential and more favourable treatment to developing country Members to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.

12.2 Members shall give particular attention to the provisions of this Agreement concerning developing country Members' rights and obligations and shall take into account the special development, financial and trade needs of developing country Members in the implementation of this Agreement, both nationally and in the operation of this Agreement's institutional arrangements.

12.3 Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members.

12.4 Members recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

12.5 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative

participation of relevant bodies in all Members, taking into account the special problems of developing country Members.

12.6 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing country Members, examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing country Members.

12.7 Members shall, in accordance with the provisions of Article 11, provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting Members and in particular of the least-developed country Members.

12.8 It is recognized that developing country Members may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures. It is further recognized that the special development and trade needs of developing country Members, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Members, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13 (referred to in this Agreement as the "Committee") is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country Member, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members.

12.9 During consultations, developed country Members shall bear in mind the special difficulties experienced by developing country Members in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing country Members with their efforts in this direction, developed country Members shall take account of the special needs of the former in regard to financing, trade and development.

12.10 The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing country Members on national and international levels.

* * *

24. United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa*

Affirming that human beings in affected or threatened areas are at the centre of concerns to combat desertification and mitigate the effects of drought,

Noting the high concentration of developing countries, notably the least developed countries, among those experiencing serious drought and/or desertification, and the particularly tragic consequences of these phenomena in Africa,

Considering the impact of trade and relevant aspects of international economic relations on the ability of affected countries to combat desertification adequately,
Recognizing also the importance and necessity of international cooperation and partnership in combating desertification and mitigating the effects of drought,

Recognizing further the importance of the provision to affected developing countries, particularly in Africa, of effective means, *inter alia* substantial financial resources, including new and additional funding, and access to technology, without which it will be difficult for them to implement fully their commitments under this Convention,

Article 6
Obligations of developed country Parties

In addition to their general obligations pursuant to Article 4, developed country Parties undertake to:
[…]

(e) promote and facilitate access by affected country Parties, particularly affected developing country Parties, to appropriate technology, knowledge and know-how.

Article 12
International cooperation

Affected country Parties, in collaboration with other Parties and the international community, should cooperate to ensure the promotion of an enabling international environment in the implementation of the Convention. Such cooperation should also cover fields of technology transfer as well as scientific research and development, information collection and dissemination and financial resources.

Article 16
Information collection, analysis and exchange

The Parties agree, according to their respective capabilities, to integrate and coordinate the collection, analysis and exchange of relevant short term and long term data and information

* Desertification Convention (1994):
International Legal Materials, Volume 33, Number 5, September 1994; and
<http://www.unccd.int/convention/text/convention.php>

to ensure systematic observation of land degradation in affected areas and to understand better and assess the processes and effects of drought and desertification. This would help accomplish, *inter alia*, early warning and advance planning for periods of adverse climatic variation in a form suited for practical application by users at all levels, including especially local populations. To this end, they shall, as appropriate:

(a) facilitate and strengthen the functioning of the global network of institutions and facilities for the collection, analysis and exchange of information, as well as for systematic observation at all levels, which shall, *inter alia*:

[…]

(iii) use and disseminate modern technology for data collection, transmission and assessment on land degradation; and

Article 17
Research and development

1. The Parties undertake, according to their respective capabilities, to promote technical and scientific cooperation in the fields of combatting desertification and mitigating the effects of drought through appropriate national, subregional, regional and international institutions. To this end, they shall support research activities that:

(a) contribute to increased knowledge of the processes leading to desertification and drought and the impact of, and distinction between, causal factors, both natural and human, with a view to combatting desertification and mitigating the effects of drought, and achieving improved productivity as well as sustainable use and management of resources;
(b) respond to well defined objectives, address the specific needs of local populations and lead to the identification and implementation of solutions that improve the living standards of people in affected areas;
(c) protect, integrate, enhance and validate traditional and local knowledge, know-how and practices, ensuring, subject to their respective national legislation and/or policies, that the owners of that knowledge will directly benefit on an equitable basis and on mutually agreed terms from any commercial utilization of it or from any technological development derived from that knowledge;
(d) develop and strengthen national, subregional and regional research capabilities in affected developing country Parties, particularly in Africa, including the development of local skills and the strengthening of appropriate capacities, especially in countries with a weak research base, giving particular attention to multidisciplinary and participative socio-economic research;
(e) take into account, where relevant, the relationship between poverty, migration caused by environmental factors, and desertification;
(f) promote the conduct of joint research programmes between national, subregional, regional and international research organizations, in both the public and private sectors, for the development of improved, affordable and accessible technologies for sustainable development through effective participation of local populations and communities; and
(g) enhance the availability of water resources in affected areas, by means of, *inter alia*, cloud-seeding.

2. Research priorities for particular regions and subregions, reflecting different local conditions, should be included in action programmes. The Conference of the Parties shall review research priorities periodically on the advice of the Committee on Science and Technology.

Article 18

Transfer, acquisition, adaptation and development of technology

1. The Parties undertake, as mutually agreed and in accordance with their respective national legislation and/or policies, to promote, finance and/or facilitate the financing of the transfer, acquisition, adaptation and development of environmentally sound, economically viable and socially acceptable technologies relevant to combatting desertification and/or mitigating the effects of drought, with a view to contributing to the achievement of sustainable development in affected areas. Such cooperation shall be conducted bilaterally or multilaterally, as appropriate, making full use of the expertise of intergovernmental and non-governmental organizations. The Parties shall, in particular:

(a) fully utilize relevant existing national, subregional, regional and international information systems and clearing-houses for the dissemination of information on available technologies, their sources, their environmental risks and the broad terms under which they may be acquired;
(b) facilitate access, in particular by affected developing country Parties, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights, to technologies most suitable to practical application for specific needs of local populations, paying special attention to the social, cultural, economic and environmental impact of such technology;
(c) facilitate technology cooperation among affected country Parties through financial assistance or other appropriate means;
(d) extend technology cooperation with affected developing country Parties, including, where relevant, joint ventures, especially to sectors which foster alternative livelihoods; and
(e) take appropriate measures to create domestic market conditions and incentives, fiscal or otherwise, conducive to the development, transfer, acquisition and adaptation of suitable technology, knowledge, know-how and practices, including measures to ensure adequate and effective protection of intellectual property rights.

2. The Parties shall, according to their respective capabilities, and subject to their respective national legislation and/or policies, protect, promote and use in particular relevant traditional and local technology, knowledge, know-how and practices and, to that end, they undertake to:

(a) make inventories of such technology, knowledge, know-how and practices and their potential uses with the participation of local populations, and disseminate such information, where appropriate, in cooperation with relevant intergovernmental and non-governmental organizations;
(b) ensure that such technology, knowledge, know-how and practices are adequately protected and that local populations benefit directly, on an equitable basis and as

mutually agreed, from any commercial utilization of them or from any technological development derived therefrom;

(c) encourage and actively support the improvement and dissemination of such technology, knowledge, know-how and practices or of the development of new technology based on them; and

(d) facilitate, as appropriate, the adaptation of such technology, knowledge, know-how and practices to wide use and integrate them with modern technology, as appropriate.

Article 19

Capacity building, education and public awareness

1. The Parties recognize the significance of capacity building -- that is to say, institution building, training and development of relevant local and national capacities -- in efforts to combat desertification and mitigate the effects of drought. They shall promote, as appropriate, capacity- building:

(a) through the full participation at all levels of local people, particularly at the local level, especially women and youth, with the cooperation of non-governmental and local organizations;

(b) by strengthening training and research capacity at the national level in the field of desertification and drought;

(c) by establishing and/or strengthening support and extension services to disseminate relevant technology methods and techniques more effectively, and by training field agents and members of rural organizations in participatory approaches for the conservation and sustainable use of natural resources;

(d) by fostering the use and dissemination of the knowledge, know-how and practices of local people in technical cooperation programmes, wherever possible;

(e) by adapting, where necessary, relevant environmentally sound technology and traditional methods of agriculture and pastoralism to modern socio-economic conditions;

(f) by providing appropriate training and technology in the use of alternative energy sources, particularly renewable energy resources, aimed particularly at reducing dependence on wood for fuel;

(g) through cooperation, as mutually agreed, to strengthen the capacity of affected developing country Parties to develop and implement programmes in the field of collection, analysis and exchange of information pursuant to article 16;

[…]

Article 20

Financial resources

1. Given the central importance of financing to the achievement of the objective of the Convention, the Parties, taking into account their capabilities, shall make every effort to

ensure that adequate financial resources are available for programmes to combat desertification and mitigate the effects of drought.

2. In this connection, developed country Parties, while giving priority to affected African country Parties without neglecting affected developing country Parties in other regions, in accordance with article 7, undertake to:

(a) mobilize substantial financial resources, including grants and concessional loans, in order to support the implementation of programmes to combat desertification and mitigate the effects of drought;

(b) promote the mobilization of adequate, timely and predictable financial resources, including new and additional funding from the Global Environment Facility of the agreed incremental costs of those activities concerning desertification that relate to its four focal areas, in conformity with the relevant provisions of the Instrument establishing the Global Environment Facility;

(c) facilitate through international cooperation the transfer of technology, knowledge and know-how; and

[…]

6. Other Parties are encouraged to provide, on a voluntary basis, knowledge, know-how and techniques related to desertification and/or financial resources to affected developing country Parties.

7. The full implementation by affected developing country Parties, particularly those in Africa, of their obligations under the Convention will be greatly assisted by the fulfilment by developed country Parties of their obligations under the Convention, including in particular those regarding financial resources and transfer of technology. In fulfilling their obligations, developed country Parties should take fully into account that economic and social development and poverty eradication are the first priorities of affected developing country Parties, particularly those in Africa.

ANNEX I
REGIONAL IMPLEMENTATION ANNEX FOR AFRICA

Article 5
Commitments and obligations of developed country Parties

1. In fulfilling their obligations pursuant to articles 4, 6 and 7 of the Convention, developed country Parties shall give priority to affected African country Parties and, in this context, shall:

(a) assist them to combat desertification and/or mitigate the effects of drought by, inter alia, providing and/or facilitating access to financial and/or other resources, and promoting, financing and/or facilitating the financing of the transfer, adaptation and access to appropriate environmental technologies and know-how, as mutually agreed and in accordance with national policies, taking into account their adoption of poverty eradication as a central strategy;

[…]

(b) continue to allocate significant resources and/or increase resources to combat desertification and/or mitigate the effects of drought; and

(c) assist them in strengthening capacities to enable them to improve their institutional frameworks, as well as their scientific and technical capabilities, information collection and analysis, and research and development for the purpose of combating desertification and/or mitigating the effects of drought.

2. Other country Parties may provide, on a voluntary basis, technology, knowledge and know-how relating to desertification and/or financial resources, to affected African country Parties. The transfer of such knowledge, know-how and techniques is facilitated by international cooperation.

Article 17
Transfer, acquisition, adaptation and access to environmentally sound technology

In implementing article 18 of the Convention relating to transfer, acquisition, adaptation and development of technology, the Parties undertake to give priority to African country Parties and, as necessary, to develop with them new models of partnership and cooperation with a view to strengthening capacity building in the fields of scientific research and development and information collection and dissemination to enable them to implement their strategies to combat desertification and mitigate the effects of drought.

ANNEX II
REGIONAL IMPLEMENTATION ANNEX FOR ASIA

Article 2
Particular conditions of the Asian region

In carrying out their obligations under the Convention, the Parties shall, as appropriate, take into consideration the following particular conditions which apply in varying degrees to the affected country Parties of the region:
[…]

(f) their need for international cooperation to pursue sustainable development objectives relating to combating desertification and mitigating the effects of drought.

Article 4
National action programmes

1. In preparing and implementing national action programmes, the affected country Parties of the region, consistent with their respective circumstances and policies, may, *inter alia*, as appropriate:
[…]

(i) formulate in a spirit of partnership, where international cooperation, including financial and technical resources, is involved, appropriate arrangements supporting their action programmes.

Article 6
Regional activities

Regional activities for the enhancement of subregional or joint action programmes may include, inter alia, measures to strengthen institutions and mechanisms for coordination and cooperation at the national, subregional and regional levels, and to promote the implementation of articles 16 to 19 of the Convention. These activities may also include:

(a) promoting and strengthening technical cooperation networks;

(b) preparing inventories of technologies, knowledge, know-how and practices, as well as traditional and local technologies and know-how, and promoting their dissemination and use;

(c) evaluating the requirements for technology transfer and promoting the adaptation and use of such technologies; and

(d) encouraging public awareness programmes and promoting capacity building at all levels, strengthening training, research and development and building systems for human resource development.

Article 7
Financial resources and mechanisms

[…]

2. In conformity with the Convention and on the basis of the coordinating mechanism provided for in article 8 and in accordance with their national development policies, affected country Parties of the region shall, individually or jointly:

(a) adopt measures to rationalize and strengthen mechanisms to supply funds through public and private investment with a view to achieving specific results in action to combat desertification and mitigate the effects of drought;

(b) identify international cooperation requirements in support of national efforts, particularly financial, technical and technological; and

[…]

Article 8
Cooperation and coordination mechanisms

1. Affected country Parties, through the appropriate bodies designated pursuant to article 4, paragraph 1 (a), and other Parties in the region, may, as appropriate, set up a mechanism for, *inter alia*, the following purposes:

(a) exchange of information, experience, knowledge and know-how;

(b) cooperation and coordination of actions, including bilateral and multilateral arrangements, at the subregional and regional levels;

(c) promotion of scientific, technical, technological and financial cooperation pursuant to articles 5 to 7;

ANNEX III
REGIONAL IMPLEMENTATION ANNEX
FOR LATIN AMERICA AND THE CARIBBEAN

Article 4
Content of national action programmes

In the light of their respective situations, the affected country Parties of the region may take account, *inter alia*, of the following thematic issues in developing their national strategies for action to combat desertification and/or mitigate the effects of drought, pursuant to article 5 of the Convention:

(a) increasing capacities, education and public awareness, technical, scientific and technological cooperation and financial resources and mechanisms;

[…]

Article 5
Technical, scientific and technological cooperation

In conformity with the Convention, in particular its articles 16 to 18, and on the basis of the coordinating mechanism provided for in article 7, affected country Parties of the region shall, individually or jointly:

(a) promote the strengthening of technical cooperation networks and national, subregional and regional information systems, as well as their integration, as appropriate, in worldwide sources of information;

(b) prepare an inventory of available technologies and know-how and promote their dissemination and use;

(c) promote the use of traditional technology, knowledge, know-how and practices pursuant to article 18, paragraph 2 (b), of the Convention;

(d) identify transfer of technology requirements; and

(e) promote the development, adaptation, adoption and transfer of relevant existing and new environmentally sound technologies.

Article 7
Institutional framework

1. In order to give effect to this Annex, affected country Parties of the region shall:

(a) establish and/or strengthen national focal points to coordinate action to combat desertification and/or mitigate the effects of drought; and

(b) set up a mechanism to coordinate the national focal points for the following purposes:

(i) exchanges of information and experience;

(ii) coordination of activities at the subregional and regional levels;

(iii) promotion of technical, scientific, technological and financial cooperation;

(iv) identification of external cooperation requirements; and

(v) follow-up and evaluation of the implementation of action programmes.

* * *

25. International Tropical Timber Agreement*

Article 1
Objectives

1. Recognizing the sovereignty of members over their natural resources, as defined in Principle 1 (a) of the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, the objectives of the International Tropical Timber Agreement, 1994 (hereinafter referred to as "this Agreement") are:

(m) To promote the access to, and transfer of, technologies and technical cooperation to implement the objectives of this Agreement, including on concessional and preferential terms and conditions, as mutually agreed;

Article 27
Functions of the Committees

2. The Committee on Reforestation and Forest Management shall:

(b) encourage the increase of technical assistance and transfer of technology in the fields of reforestation and forest management to developing countries;

3. The Committee on Forest Industry shall:

(a) promote cooperation between member countries as partners in the development of processing activities in producing member countries, inter alia, in the following areas:

(i) product development through transfer of technology.

* * *

* Tropical Timber Agreement (ITTA) (1994):
ITTO (1994). *ITTA (International Tropical Timber Agreement 1994)*, Document No. GI-1b; and <http://www.itto.or.jp/inside/agreement.html>

26. United Nations Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions*

Bearing in mind that measures taken to reduce sulphur emissions should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international competition and trade,

Taking into consideration existing scientific and technical data on emissions, atmospheric processes and effects on the environment of sulphur oxides, as well as on abatement costs,
[…]

Affirming the need to ensure environmentally sound and sustainable development,

Article 3
Exchange of Technology

1. The Parties shall, consistent with their national laws, regulations and practices, facilitate the exchange of technologies and techniques, including those that increase energy efficiency, the use of renewable energy and the processing of low-sulphur fuels, to reduce sulphur emissions, particularly through the promotion of:

(a) The commercial exchange of available technology;
(b) Direct industrial contacts and cooperation, including joint ventures;
(c) The exchange of information and experience;
(d) The provision of technical assistance.

2. In promoting the activities specified in paragraph 1 above, the Parties shall create favourable conditions by facilitating contacts and cooperation among appropriate organizations and individuals in the private and public sectors that are capable of providing technology, design and engineering services, equipment or finance.

3. The Parties shall, no later than six months after the date of entry into force of the present Protocol, commence consideration of procedures to create more favourable conditions for the exchange of technology to reduce sulphur emissions.

* * *

* Protocol on Long Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions (1994): *International Legal Materials*, Volume 33, Number 6, November 1994.

27. Energy Charter Protocol on Energy efficiency and Related Environmental Aspects*

Article 3
Basic Principles

Contracting Parties shall be guided by the following principles:

(1) Contracting Parties shall co-operate and, as appropriate, assist each other in developing and implementing energy efficiency policies, laws and regulations.
(2) Contracting Parties shall establish energy efficiency policies and appropriate legal and regulatory frameworks which promote, *inter alia*:

(d) education and awareness;
(e) dissemination and transfer of technologies;

Article 7
Promotion of Energy Efficient Technology

(1) Consistent with the provisions of the Energy Charter Treaty, Contracting Parties shall encourage commercial trade and co-operation in energy efficient and environmentally sound technologies, energy-related services and management practices.

(2) Contracting Parties shall promote the use of these technologies, services and management practices throughout the Energy Cycle.

Annex - Illustrative and non-exhaustive list of possible areas of co-operation pursuant to article 9

[…]
- Technology transfer, technical assistance and industrial joint ventures subject to international property rights regimes and other applicable international agreements;

[…]
- Education, training, information and statistics;

Information:

- awareness creation;
- data bases: access, technical specifications, information systems;
- dissemination, collection and collation of technical information;
- behavioural studies.

Training and education:

- exchanges of energy managers, officials, engineers and students;
- organization of international training courses.

* * *

* Energy Charter Protocol (1995):
International Legal Materials, Volume 34, Number 2, March 1995.

28. Rotterdam Convention on the prior informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*

Taking into account the circumstances and particular requirements of developing countries and countries with economies in transition, in particular the need to strengthen national capabilities and capacities for the management of chemicals, including transfer of technology, providing financial and technical assistance and promoting cooperation among the Parties,

Article 14
Information exchange

1. Each Party shall, as appropriate and in accordance with the objective of this Convention, facilitate.

(a) The exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological, ecotoxicological and safety information;

Article 16
Technical assistance

The Parties shall, taking into account in particular the needs of developing countries and countries with economies in transition, cooperate in promoting technical assistance for the development of the infrastructure and the capacity necessary to manage chemicals to enable implementation of this Convention. Parties with more advanced programmes for regulating chemicals should provide technical assistance, including training, to other Parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle.

* * *

* Rotterdam Convention (1999):
International Legal Materials, Volume 38, Number 1, January 1999.

B. Other Multilateral Instruments

1. United Nations General Assembly Resolution 3201 (S-VI). Declaration on the Establishment of a New International Economic Order*

Solemnly proclaim our united determination to work urgently for The Establishment of a New International Economic Order based on equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations, and, to that end, declare:

4. The new international economic order should be founded on full respect for the following principles:

[…]

(m) Improving the competitiveness of natural materials facing competition from synthetic substitutes;

(p) Giving to the developing countries access to the achievements of modern science and technology, and promoting the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies.

* * *

* Declaration on the Establishment of a New International Economic Order (1974):
United Nations (1974). *Official Records of the General Assembly: Sixth Special Session,* Supplement No.1 (A/9559) (New York: United Nations), pp. 3-12.

2. United Nations General Assembly Resolution 3202 (S-VI). Programme of Action on the Establishment of a New International Economic Order*

IV. Transfer of Technology

All efforts should be made:

(a) To formulate an international code of conduct for the transfer of technology corresponding to needs and conditions prevalent in developing countries;
(b) To give access on improved terms to modern technology and to adapt that technology, as appropriate, to specific economic, social and ecological conditions and varying stages of development in developing countries;
(c) to expand significantly the assistance from developed to developing countries in research and development programmes and in the creation of suitable indigenous technology;
(d) to adapt commercial practices governing transfer of technology to the requirements of the developing countries and to prevent abuse of the rights of sellers;
(e) to promote international cooperation in research and development in exploration and exploitation, conservation and the legitimate utilization of natural resources and all sources of energy.

In taking the above measures, the special needs of the least developed and land-locked countries should be borne in mind.

3. United Nations General Assembly Resolution 1803 (XVII). Permanent Sovereignty over Natural Resources**

6. International cooperation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

* * *

* Programme of Action on the Establishment of a New Economic Order (1974):
United Nations (1974). *Official Records of the General Assembly: Sixth Special Session,* Supplement No.1 (A/9559) (New York: United Nations), pp. 3-12.

** Permanent Sovereignty over Natural Resources (1962):
United Nations (1963). *Official Records of the General Assembly: Seventeenth Session,* Supplement No.17 (A/5217) (New York: United Nations), pp. 15-16.

4. ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*

The Governing Body of the International Labour Office;

Recalling that the International Labour Organisation for many years has been involved with certain social issues related to the activities of multinational enterprises;

Noting in particular that various Industrial Committees, Regional Conferences, and the International Labour Conference since the mid-1960s have requested appropriate action by the Governing Body in the field of multinational enterprises and social policy;

Having been informed of the activities of other international bodies, in particular the UN Commission on Transnational Corporations and the Organisation for Economic Co-operation and Development (OECD);

Considering that the ILO, with its unique tripartite structure, its competence, and its long-standing experience in the social field, has an essential role to play in evolving principles for the guidance of governments, workers' and employers' organisations, and multinational enterprises themselves;

Recalling that it convened a Tripartite Meeting of Experts on the Relationship between Multinational Enterprises and Social Policy in 1972, which recommended an ILO programme of research and study, and a Tripartite Advisory Meeting on the Relationship of Multinational Enterprises and Social Policy in 1976 for the purpose of reviewing the ILO programme of research and suggesting appropriate ILO action in the social and labour field;

Bearing in mind the deliberations of the World Employment Conference;

Having thereafter decided to establish a tripartite group to prepare a Draft Tripartite Declaration of Principles covering all of the areas of ILO concern which relate to the social aspects of the activities of multinational enterprises, including employment creation in the developing countries, all the while bearing in mind the recommendations made by the Tripartite Advisory Meeting held in 1976;

Having also decided to reconvene the Tripartite Advisory Meeting to consider the Draft Declaration of Principles as prepared by the tripartite group;

Having considered the Report and the Draft Declaration of Principles submitted to it by the reconvened Tripartite Advisory Meeting;

Hereby approves the following Declaration which may be cited as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office, and invites governments of States Members of the ILO, the employers' and workers' organisations concerned and the multinational enterprises operating in their territories to observe the principles embodied therein.

* Tripartite Declaration (1977):
Official Bulletin (Geneva: ILO), 1978, vol. LXI, Series A, No. 1, pp. 49-56

1. Multinational enterprises play an important part in the economies of most countries and in international economic relations. This is of increasing interest to governments as well as to employers and workers and their respective organisations. Through international direct investment and other means such enterprises can bring substantial benefits to home and host countries by contributing to the more efficient utilisation of capital, technology and labour. Within the framework of development policies established by governments, they can also make an important contribution to the promotion of economic and social welfare; to the improvement of living standards and the satisfaction of basic needs; to the creation of employment opportunities, both directly and indirectly; and to the enjoyment of basic human rights, including freedom of association, throughout the world. On the other hand, the advances made by multinational enterprises in organising their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives and with the interest of the workers. In addition, the complexity of multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern either in the home or in the host countries, or in both.

2. The aim of this Tripartite Declaration of Principles is to encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise, taking into account the United Nations resolutions advocating the Establishment of a New International Economic Order.

3. This aim will be furthered by appropriate laws and policies, measures and actions adopted by the governments and by co-operation among the governments and the employers' and workers' organisations of all countries.

4. The principles set out in this Declaration are commended to the governments, the employers' and workers' organisations of home and host countries and to the multinational enterprises themselves.

5. These principles are intended to guide the governments, the employers' and workers' organisations and the multinational enterprises in taking such measures and actions and adopting such social policies, including those based on the principles laid down in the Constitution and the relevant Conventions and Recommendations of the ILO, as would further social progress.

6. To serve its purpose this Declaration does not require a precise legal definition of multinational enterprises; this paragraph is designed to facilitate the understanding of the Declaration and not to provide such a definition. Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. The degree of autonomy of entities within multinational enterprises in relation to each other varies widely from one such enterprise to another, depending on the nature of the links between such entities and their fields of activity and having regard to the great diversity in the form of ownership, in the size, in the nature and location of the operations of the enterprises concerned. Unless otherwise specified, the term "multinational enterprise" is used in this Declaration to designate the various entities (parent companies or local entities or both or the organisation as a whole) according to the distribution of responsibilities among them, in the expectation that they will co-operate and provide assistance to one another as necessary to facilitate observance of the principles laid down in the Declaration.

7. This Declaration sets out principles in the fields of employment, training, conditions of work and life and industrial relations which governments, employers' and workers' organisations and multinational enterprises are recommended to observe on a voluntary basis; its provisions shall not limit or otherwise affect obligations arising out of ratification of any ILO Convention.

General policies

8. All the parties concerned by this Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organisation and its principles according to which freedom of expression and association are essential to sustained progress. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.

9. Governments which have not yet ratified Conventions Nos. 87, 98, 111 and 122 are urged to do so and in any event to apply, to the greatest extent possible, through their national policies, the principles embodied therein and in Recommendations Nos. 111, 119 and 122.[17] Without prejudice to the obligation of governments to ensure compliance with Conventions they have ratified, in countries in which the Conventions and Recommendations cited in this paragraph are not complied with, all parties should refer to them for guidance in their social policy.

10. Multinational enterprises should take fully into account established general policy objectives of the countries in which they operate. Their activities should be in harmony with the development priorities and social aims and structure of the country in which they operate. To this effect, consultations should be held between multinational enterprises, the government and, wherever appropriate, the national employers' and workers' organisations concerned.

11. The principles laid down in this Declaration do not aim at introducing or maintaining inequalities of treatment between multinational and national enterprises. They reflect good practice for all. Multinational and national enterprises, wherever the principles of this Declaration are relevant to both, should be subject to the same expectations in respect of their conduct in general and their social practices in particular.

12. Governments of home countries should promote good social practice in accordance with this Declaration of Principles, having regard to the social and labour law, regulations and practices in host countries as well as to relevant international standards. Both host and home country governments should be prepared to have consultations with each other, whenever the need arises, on the initiative of either.

[17] Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 122) concerning Employment Policy; Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer; Recommendation (No. 122) concerning Employment Policy.

Employment

Employment promotion

13. With a view to stimulating economic growth and development, raising living standards, meeting manpower requirements and overcoming unemployment and underemployment, governments should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.[18]

14. This is particularly important in the case of host country governments in developing areas of the world where the problems of unemployment and underemployment are at their most serious. In this connection, the general conclusions adopted by the Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour (Geneva, June 1976) should be kept in mind.[19]

15. Paragraphs 13 and 14 above establish the framework within which due attention should be paid, in both home and host countries, to the employment impact of multinational enterprises.

16. Multinational enterprises, particularly when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise.

17. Before starting operations, multinational enterprises should wherever appropriate consult the competent authorities and the national employers' and workers' organisations in order to keep their manpower plans, as far as practicable, in harmony with national social development policies. Such consultation, as in the case of national enterprises, should continue between the multinational enterprises and all parties concerned, including the workers' organisations.

18. Multinational enterprises should give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels in co-operation, as appropriate, with representatives of the workers employed by them or of the organisations of these workers and governmental authorities.

19. Multinational enterprises, when investing in developing countries, should have regard to the importance of using technologies which generate employment, both directly and indirectly. To the extent permitted by the nature of the process and the conditions prevailing in the economic sector concerned, they should adapt technologies to the needs and characteristics of the host countries. They should also, where possible, take part in the development of appropriate technology in host countries.

20. To promote employment in developing countries, in the context of an expanding world economy, multinational enterprises, wherever practicable, should give consideration to

[18]Convention (No. 122) and Recommendation (No. 122) concerning Employment Policy.

[19] ILO, World Employment Conference, Geneva, 4-17 June 1976.

the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local processing of raw materials. Such arrangements should not be used by multinational enterprises to avoid the responsibilities embodied in the principles of this Declaration.

PROCEDURE FOR THE EXAMINATION OF DISPUTES CONCERNING THE APPLICATION OF THE TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY BY MEANS OF INTERPRETATION OF ITS PROVISIONS

1. The purpose of the procedure is to interpret the provisions of the Declaration when needed to resolve a disagreement on their meaning, arising from an actual situation, between parties to whom the Declaration is commended.

2. The procedure should in no way duplicate or conflict with existing national or ILO procedures. Thus, it cannot be invoked:

(a) in respect of national law and practice;

(b) in respect of international labour Conventions and Recommendations;

(c) in respect of matters failing under the freedom of association procedure.

The above means that questions regarding national law and practice should be considered through appropriate national machinery; that questions regarding international labour Conventions and Recommendations should be examined through the various procedures provided for in Articles 19, 22. 24 and 26 of the Constitution of the ILO, or through government requests to the Office for informal interpretation; and that questions concerning freedom of association should be considered through the special ILO procedures applicable to that area.

3. When a request for interpretation of the Declaration is received by the International Labour Office, the Office shall acknowledge receipt and bring it before the Officers of the Committee on Multinational Enterprises. The Office will inform the government and the central organisations of employers and workers concerned of any request for interpretation received directly from an organisation under paragraph *5(b)* and (c).

4. The Officers of the Committee on Multinational Enterprises shall decide unanimously after consultations in the groups whether the request is receivable under the procedure. If they cannot reach agreement the request shall be referred to the full Committee for decision.

5. Requests for interpretation may be addressed to the Office:

(a) as a rule by the government of a member State acting either on its own initiative or at the request of a national organisation of employers or workers;

(b) by a national organisation of employers or workers. which is representative at the national and/or sectoral level, subject to the conditions set out in paragraph 6. Such requests should normally be channelled through the central organisations in the country concerned;

(c) by an international organisation of employers or workers on behalf of a representative national affiliate.

6. In the case of *5(b)* and (c), requests may be submitted if it can be demonstrated:

(a) that the government concerned has declined to submit the request to the Office; or

(b) that three months have elapsed since the organisation addressed the government without a statement of the government's intention.

7. In the case of receivable requests the Office shall prepare a draft reply in consultation with the Officers of the Committee on Multinational Enterprises. All appropriate sources of information shall be used, including government. employers' and workers' sources in the country concerned. The Officers may ask the Office to indicate a period within which the information should be provided.

8. The draft reply to a receivable request shall be considered and approved by the Committee on Multinational Enterprises prior to submission to the Governing Body for approval.

9. The reply when approved by the Governing Body shall be forwarded to the parties concerned and published in the *Official Bulletin* of the International Labour Office.

* * *

5. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices*

Recognizing that restrictive business practices can adversely affect international trade, particularly that of developing countries, and the economic development of these countries,

…

Convinced further that the adoption of such a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices will thereby facilitate the adoption and strengthening of laws and policies in the area of restrictive business practices at the national and regional levels and thus lead to improved conditions and attain greater efficiency and participation in international trade and development, particularly that of developing countries, and to protect and promote social welfare in general, and in particular the interests of consumers in both developed and developing countries,

Affirming also the need to eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries,

A. Objectives

Taking into account the interests of all countries, particularly those of developing countries, the Set of Multilaterally Agreed Equitable Principles and Rules are framed in order to achieve the following objectives:

1. To ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries;

2. To attain greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through:

(a) The creation, encouragement and protection of competition;
(b) Control of the concentration of capital and/or economic power;
(c) Encouragement of innovation;

3. To protect and promote social welfare in general and, in particular, the interests of consumers in both developed and developing countries;

4. To eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries;

* Set of Restrictive Business Practices (1980):
UNCTAD (1981). *The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices*, Document No. TD/RBP/CONF/10/Rev. 1 (Geneva: UNCTAD).

5. To provide a Set of Multilaterally Agreed Equitable Principles and Rules for the control of restrictive business practices for adoption at the international level and thereby to facilitate the adoption and strengthening of laws and policies in this area at the national and regional levels.

B. Definitions and scope of application

For the purpose of this Set of Multilaterally Agreed Equitable Principles and Rules:

(i) Definitions

1. Restrictive business practices means acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, or which through formal, informal, written or unwritten agreements or arrangements among enterprises, have the same impact.

2. Dominant position of market power refers to a situation where an enterprise, either by itself or acting together with a few other enterprises, is in a position to control the relevant market for a particular good or service or group of goods or services.

3. Enterprises means firms, partnerships, corporations, companies, other associations, natural or juridical persons, or any combination thereof, irrespective of the mode of creation or control or ownership, private or State, which are engaged in commercial activities, and includes their branches, subsidiaries, affiliates, or other entities directly or indirectly controlled by them.

(ii) Scope of application

4. The Set of Principles and Rules applies to restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries and the economic development of these countries. It applies irrespective of whether such practices involve enterprises in one or more countries.

5. The "principles and rules for enterprises, including transnational corporations" apply to all transactions in goods and services.

6. The "principles and rules for enterprises, including transnational corporations" are addressed to all enterprises.

7. The provisions of the Set of Principles and Rules shall be universally applicable to all countries and enterprises regardless of the parties involved in the transactions, acts or behaviour.

8. Any reference to "States" or "Governments" shall be construed as including any regional groupings of States, to the extent that they have competence in the area of restrictive business practices.

9. The Set of Principles and Rules shall not apply to intergovernmental agreements, nor to restrictive business practices directly caused by such agreements.

C. Multilaterally agreed equitable principles for the control of restrictive business practices

In line with the objectives set forth, the following principles are to apply:

(i) General principles

1. Appropriate action should be taken in a mutually reinforcing manner at national, regional and international levels to eliminate, or effectively deal with, restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries and the economic development of these countries.

2. Collaboration between Governments at bilateral and multilateral levels should be established and, where such collaboration has been established, it should be improved to facilitate the control of restrictive business practices.

3. Appropriate mechanisms should be devised at the international level and/or the use of existing international machinery improved to facilitate exchange and dissemination of information among Governments with respect to restrictive business practices.

4. Appropriate means should be devised to facilitate the holding of multilateral consultations with regard to policy issues relating to the control of restrictive business practices.

5. The provisions of the Set of Principles and Rules should not be construed as justifying conduct by enterprises which is unlawful under applicable national or regional legislation.

(ii) Relevant factors in the application of the Set of Principles and Rules

6. In order to ensure the fair and equitable application of the Set of Principles and Rules, States, while bearing in mind the need to ensure the comprehensive application of the Set of Principles and Rules, should take due account of the extent to which the conduct of enterprises, whether or not created or controlled by States, is accepted under applicable legislation or regulations, bearing in mind that such laws and regulations should be clearly defined and publicly and readily available, or is required by States.

(iii) Preferential or differential treatment for developing countries

7. In order to ensure the equitable application of the Set of Principles and Rules, States, particularly developed countries, should take into account in their control of restrictive business practices the development, financial and trade needs of developing countries, in

particular of the least developed countries, for the purposes especially of developing countries in:

(a) Promoting the establishment or development of domestic industries and the economic development of other sectors of the economy, and
(b) Encouraging their economic development through regional or global arrangements among developing countries.

D. Principles and rules for enterprises, including transnational corporations

1. Enterprises should conform to the restrictive business practices laws, and the provisions concerning restrictive business practices in other laws, of the countries in which they operate, and, in the event of proceedings under these laws, should be subject to the competence of the courts and relevant administrative bodies therein.

2. Enterprises should consult and co-operate with competent authorities of countries directly affected in controlling restrictive business practices adversely affecting the interests of those countries. In this regard, enterprises should also provide information, in particular details of restrictive arrangements, required for this purpose, including that which may be located in foreign countries, to the extent that in the latter event such production or disclosure is not prevented by applicable law or established public policy. Whenever the provision of information is on a voluntary basis, its provision should be in accordance with safeguards normally applicable in this field.

3. Enterprises, except when dealing with each other in the context of an economic entity wherein they are under common control, including through ownership, or otherwise not able to act independently of each other, engaged on the market in rival or potentially rival activities, should refrain from practices such as the following when, through formal, informal, written or unwritten agreements or arrangements, they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries:

(a) Agreements fixing prices, including as to exports and imports;
(b) Collusive tendering;
(c) Market or customer allocation arrangements;
(d) Allocation by quota to sales and production;
(e) Collective action to enforce arrangements, e.g. by concerted refusals to deal;
(f) Concerted refusal of supplies to potential importers;
(g) Collective denial of access to an arrangement, or association, which is crucial to competition.

4. Enterprises should refrain from the following acts or behaviour in a relevant market when, through an abuse* or acquisition and abuse of a dominant position of market

*Whether acts or behaviour are abusive or not should be examined in terms of their purpose and effects in the actual situation, in particular with reference to whether they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, and to whether they are

(a) Appropriate in the light of the organizational, managerial and legal relationship among the enterprises concerned, such as in the context of relations within an economic entity and not having restrictive effects outside the related enterprises

power, they limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries:

(a) Predatory behaviour towards competitors, such as using below-cost pricing to eliminate competitors;
(b) Discriminatory (i.e. unjustifiably differentiated) pricing or terms or conditions in the supply or purchase of goods or services, including by means of the use of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;
(c) Mergers, takeovers, joint ventures or other acquisitions of control, whether of a horizontal, vertical or a conglomerate nature;
(d) Fixing the prices at which goods exported can be resold in importing countries;
(e) Restrictions on the importation of goods which have been legitimately marked abroad with a trademark identical with or similar to the trademark protected as to identical or similar goods in the importing country where the trademarks in question are of the same origin, i.e. belong to the same owner or are used by enterprises between which there is economic, organizational, managerial or legal interdependence and where the purpose of such restrictions is to maintain artificially high prices;
(f) When not for ensuring the achievement of legitimate business purposes, such as quality, safety, adequate distribution or service:

    (i) Partial or complete refusals to deal on the enterprise's customary commercial terms;
    (ii) Making the supply of particular goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods;
    (iii) Imposing restrictions concerning where, or to whom, or in what form or quantities, goods supplied or other goods may be resold or exported;
    (iv) Making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier or his designee.

(b) Appropriate in light of special conditions or economic circumstances in the relevant market such as exceptional conditions of supply and demand or the size of the market;

(c) Of types which are usually treated as acceptable under pertinent national or regional laws and regulations for the control of restrictive business practices.

(d) Consistent with the purposes and objectives of these principles and rules.

E. Principles and rules for States at national, regional and subregional levels

1. States should, at the national level or through regional groupings, adopt, improve and effectively enforce appropriate legislation and implementing judicial and administrative procedures for the control of restrictive business practices, including those of transnational corporations.

2. States should base their legislation primarily on the principle of eliminating or effectively dealing with acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on their trade or economic development, or which through formal, informal, written or unwritten agreements or arrangements among enterprises have the same impact.

3. States, in their control of restrictive business practices, should ensure treatment of enterprises which is fair, equitable, on the same basis to all enterprises, and in accordance with established procedures of law. The laws and regulations should be publicly and readily available.

4. States should seek appropriate remedial or preventive measures to prevent and/or control the use of restrictive business practices within their competence when it comes to the attention of States that such practices adversely affect international trade, and particularly the trade and development of the developing countries.

5. Where, for the purposes of the control of restrictive business practices, a State obtains information from enterprises containing legitimate business secrets, it should accord such information reasonable safeguards normally applicable in this field, particularly to protect its confidentiality.

6. States should institute or improve procedures for obtaining information from enterprises, including transnational corporations, necessary for their effective control of restrictive business practices, including in this respect details of restrictive agreements, undertakings and other arrangements.

7. States should establish appropriate mechanisms at the regional and subregional levels to promote exchange of information on restrictive business practices and on the application of national laws and policies in this area, and to assist each other to their mutual advantage regarding control of restrictive business practices at the regional and subregional levels.

8. States with greater expertise in the operation of systems for the control of restrictive business practices should, on request, share their experience with, or otherwise provide technical assistance to, other States wishing to develop or improve such systems.

9. States should, on request, or at their own initiative when the need comes to their attention, supply to other States, particularly developing countries, publicly available information and, to the extent consistent with their laws and established public policy, other information necessary to the receiving interested State for its effective control of restrictive business practices.

F. International measures

Collaboration at the international level should aim at eliminating or effectively dealing with restrictive business practices, including those of transnational corporations, through strengthening and improving controls over restrictive business practices adversely affecting international trade, particularly that of developing countries, and the economic development of these countries. In this regard, action should include:

1. Work aimed at achieving common approaches in national policies relating to restrictive business practices compatible with the Set of Principles and Rules.

2. Communication annually to the Secretary-General of UNCTAD of appropriate information on steps taken by States and regional groupings to meet their commitment to the Set of Principles and Rules, and information on the adoption, development and application of legislation, regulations and policies concerning restrictive business practices.

3. Continued publication annually by UNCTAD of a report on developments in restrictive business practices legislation and on restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, based upon publicly available information and as far as possible other information, particularly on the basis of requests addressed to all member States or provided at their own initiative and, where appropriate, to the United Nations Centre on Transnational Corporations and other competent international organizations.

4. Consultations:

(a) Where a State, particularly of a developing country, believes that a consultation with another State or States is appropriate in regard to an issue concerning control of restrictive business practices, it may request a consultation with those States with a view to finding a mutually acceptable solution. When a consultation is held, the States involved may request the Secretary-General of UNCTAD to provide mutually agreed conference facilities for such a consultation;

(b) States should accord full consideration to requests for consultations and, upon agreement as to the subject of and the procedures for such a consultation, the consultation should take place at an appropriate time;

(c) If the States involved so agree, a joint report on the consultations and their results should be prepared by the States involved and, if they so wish, with the assistance of the UNCTAD secretariat, and be made available to the Secretary-General of UNCTAD for inclusion in the annual report on restrictive business practices.

5. Continued work within UNCTAD on the elaboration of a model law or laws on restrictive business practices in order to assist developing countries in devising appropriate legislation. States should provide necessary information and experience to UNCTAD in this connection.

* * *

6. International Undertaking on Plant Genetic Resources*

Article 6

International cooperation will, in particular, be directed to:

(a) establishing or strengthening the capabilities of developing countries, where appropriate on a national or sub-regional basis, with respect to plant genetic resources activities, including plant survey and identification, plant breeding and seed multiplication and distribution, with the aim of enabling all countries to make full use of plant genetic resources for the benefit of their agricultural development;

(b) intensifying international activities in preservation, evaluation, documentation, exchange of plant genetic resources, plant breeding, germplasm maintenance, and seed multiplication. This would include activities carried out by FAO and other concerned agencies in the UN System, it would also include activities of other institutions, including those supported by the CGIAR. The aim would be to progressively cover all plant species that are important for agriculture and other sectors of the economy, I the present and for the future.

(c) supporting the arrangement outlined in Article 7, including the participation in such arrangements of governments and institutions, where appropriate and feasible;

(d) considering measures, such as the strengthening or establishment of funding mechanisms, to finance activities relating to plant genetic resources.

* * *

* International Undertaking (1983):
< http://www.fao.org/ag/CGRFA/iu.htm>

7. Agenda 21 of the Earth Summit in Rio*

Chapter 15
Conservation of Biological Diversity
International and regional cooperation and coordination

15.7 (d) Without prejudice to the relevant provisions of the Convention on Biological Diversity, facilitate for this chapter the transfer of technologies relevant to the conservation of biological diversity and the sustainable use of biological resources or technologies that make use of genetic resources and cause no significant damage to the environment, in conformity with Chapter 34, and recognising that technology includes biotechnology;.

Chapter 16
Environmentally Sound Management of Biotechnology

Data and information

16.6 The following activities should be undertaken:

(a) consideration of comparative assessments of the potential of the different technologies for food production, together with a system for assessing the possible effects of biotechnologies on international trade in agricultural products;
(c) maintenance and development of data banks of information on environmental and health impacts of organisms to facilitate risk assessment;
(d) acceleration of technology acquisition, transfer and adaptation by developing countries to support national activities that promote food security.

International and regional cooperation and coordination

16.7 Governments at the appropriate level, with the support of relevant international and regional organizations, should promote the following activities in conformity with international agreements or arrangements on biological diversity, as appropriate:

(a) cooperation on issues related to conservation of, access to and exchange of germ plasm; rights associated with intellectual property and informal innovations, including farmers' and breeders' rights; access to the benefits of biotechnology; and bio-safety;
(b) promotion of collaborative research programmes, especially in developing countries, to support activities outlined in this programme area, with particular reference to cooperation with local and indigenous people and their communities in the conservation of biological diversity and sustainable use of biological resources, as well as the fostering of traditional methods and knowledge of such groups in connection with these activities;
(a) acceleration of technology acquisition, transfer and adaptation by developing countries to support national activities that promote food security, through the

* Agenda 21 (1992):
<http://www.unep.org/Documents/Default.asp?DocumentID=52>

development of systems for substantial and sustainable productivity increases that do not damage or endanger local ecosystems

Human resource development

16.10 Training of competent professionals in the basic and applied sciences at all levels (including scientific personnel, technical staff and extension workers) is one of the most essential components of any programme of this kind. Creating awareness of the benefits and risks of biotechnology is essential. Given the importance of good management of research resources for the successful completion of large multidisciplinary projects, continuing programmes of formal training for scientists should include managerial training. Training programmes should also be developed, within the context of specific projects, to meet regional or national needs for comprehensively trained personnel capable of using advanced technology to reduce the "brain drain" from developing to developed countries. Emphasis should be given to encouraging collaboration between and training of scientists, extension workers and users to produce integrated systems. Additionally, special consideration should be given to the execution of programmes for training and exchange of knowledge on traditional biotechnologies and for training on safety procedures.

Capacity-building

16.11 Institutional upgrading or other appropriate measures will be needed to build up technical, managerial, planning and administrative capacities at the national level to support the activities in this programme area. Such measures should be backed up by international, scientific, technical and financial assistance adequate to facilitate technical cooperation and raise the capacities of the developing countries.

Scientific and technological means

16.19 Well-coordinated multidisciplinary efforts involving cooperation between scientists, financial institutions and industries will be required. At the global level, this may mean collaboration between research institutions in different countries, with funding at the intergovernmental level, possibly supported by similar collaboration at the national level. Research and development support will also need to be strengthened, together with the mechanisms for providing the transfer of relevant technology.

16.20 Training and technology transfer is needed at the global level, with regions and countries having access to, and participation in exchange of, information and expertise, particularly indigenous or traditional knowledge and related biotechnology. It is essential to create or enhance endogenous capabilities in developing countries to enable them to participate actively in the processes of biotechnology production.

Chapter 21
Environmentally Sound Management of Solid Wastes And Sewage-related Issues

21.23 The transfer of technology should support waste recycling and reuse by the following means:

(a) Including the transfer of recycling technologies, such as machinery for reusing plastics, rubber and paper, within bilateral and multilateral technical cooperation and aid programmes;

(b) Developing and improving existing technologies, especially indigenous technologies, and facilitating their transfer under ongoing regional and interregional technical assistance programmes;
(c) Facilitating the transfer of waste reuse and recycling technology.

Chapter 34
Transfer of Environmentally Sound Technology, Cooperation and Capacity-building

Introduction

34.1 Environmentally sound technologies protect the environment, are less polluting, use all resources in a more sustainable manner, recycle more of their wastes and products, and handle residual wastes in a more acceptable manner than the technologies for which they were substitutes.

34.2 Environmentally sound technologies in the context of pollution are "process and product technologies" that generate low or no waste, for the prevention of pollution. They also cover "end of the pipe" technologies for treatment of pollution after it has been generated.

34.3 Environmentally sound technologies are not just individual technologies, but total systems which include know-how, procedures, goods and services, and equipment as well as organizational and managerial procedures. This implies that when discussing transfer of technologies, the human resource development and local capacity-building aspects of technology choices, including gender-relevant aspects, should also be addressed. Environmentally sound technologies should be compatible with nationally determined socio-economic, cultural, and environmental priorities**.**

34.4 There is a need for favourable access to and transfer of environmentally sound technologies, in particular to developing countries, through supportive measures that promote technology cooperation and that should enable transfer of necessary technological know-how as well as building up of economic, technical, and managerial capabilities for the efficient use and further development of transferred technology. Technology cooperation involves joint efforts by enterprises and Governments, both suppliers of technology and its recipients. Therefore, such cooperation entails an iterative process involving government, the private sector, and research and development facilities to ensure the best possible results from transfer of technology. Successful long-term partnerships in technology cooperation necessarily require continuing systematic training and capacity-building at all levels over an extended period of time.

34.5 The activities proposed in this chapter aim at improving conditions and processes on information, access to and transfer of technology (including the state-of-the-art technology and related know-how), in particular to developing countries, as well as on capacity-building and cooperative arrangements and partnerships in the field of technology, in order to promote sustainable development. New and efficient technologies will be essential to increase the capabilities, in particular of developing countries, to achieve sustainable development, sustain the world's economy, protect the environment, and alleviate poverty and human suffering. Inherent in these activities is the need to address the improvement of technology currently used and its replacement, when appropriate, with more accessible and more environmentally sound technology.

Basis For Action

34.6 This chapter of Agenda 21 is without prejudice to specific commitments and arrangements on transfer of technology to be adopted in specific international instruments.

34.7 The availability of scientific and technological information and access to and transfer of environmentally sound technology are essential requirements for sustainable development. Providing adequate information on the environmental aspects of present technologies consists of two interrelated components: upgrading information on present and state-of-the-art technologies, including their environmental risks, and improving access to environmentally sound technologies.

34.8 The primary goal of improved access to technology information is to enable informed choices, leading to access to and transfer of such technologies and the strengthening of countries' own technological capabilities.

34.9 A large body of useful technological knowledge lies in the public domain. There is a need for the access of developing countries to such technologies as are not covered by patents or lie in the public domain. Developing countries would also need to have access to the know-how and expertise required for the effective utilization of the aforesaid technologies.

34.10 Consideration must be given to the role of patent protection and intellectual property rights along with an examination of their impact on the access to and transfer of environmentally sound technology, in particular to developing countries, as well as to further exploring efficiently the concept of assured access for developing countries to environmentally sound technology in its relation to proprietary rights with a view to developing effective responses to the needs of developing countries in this area.

34.11 Proprietary technology is available through commercial channels, and international business is an important vehicle for technology transfer. Tapping this pool of knowledge and recombining it with local innovations to generate alternative technologies should be pursued. At the same time that concepts and modalities for assured access to environmentally sound technologies, including state-of-the-art technologies, in particular by developing countries, continued to be explored, enhanced access to environmentally sound technologies should be promoted, facilitated and financed as appropriate, while providing fair incentives to innovators that promote research and development of new environmentally sound technologies.

34.12 Recipient countries require technology and strengthened support to help further develop their scientific, technological, professional and related capacities, taking into account existing technologies and capacities. This support would enable countries, in particular developing countries, to make more rational technology choices. These countries could then better assess environmentally sound technologies prior to their transfer and properly apply and manage them, as well as improve upon already existing technologies and adapt them to suit their specific development needs and priorities.

34.13 A critical mass of research and development capacity is crucial to the effective dissemination and use of environmentally sound technologies and their generation locally. Education and training programmes should reflect the needs of specific goal-oriented

research activities and should work to produce specialists literate in environmentally sound technology and with an interdisciplinary outlook. Achieving this critical mass involves building the capabilities of craftspersons, technicians and middle-level managers, scientists, engineers and educators, as well as developing their corresponding social or managerial support systems. Transferring environmentally sound technologies also involves innovatively adapting and incorporating them into the local or national culture.

34.14 The following objectives are proposed:

(a) To help to ensure the access, in particular of developing countries, to scientific and technological information, including information on state-of-the-art technologies;

(b) To promote, facilitate, and finance, as appropriate, the access to and the transfer of environmentally sound technologies and corresponding know-how, in particular to developing countries, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights as well as the special needs of developing countries for the implementation of Agenda/21;

c) To facilitate the maintenance and promotion of environmentally sound indigenous technologies that may have been neglected or displaced, in particular in developing countries, paying particular attention to their priority needs and taking into account the complementary roles of men and women;

d) To support endogenous capacity-building, in particular in developing countries, so they can assess, adopt, manage and apply environmentally sound technologies. This could be achieved through *inter alia*:

(i) trengthening of institutional capacities for research and development and programme implementation;

(iii) itegrated sector assessments of technology needs, in accordance with countries' plans, objectives and priorities as foreseen in the implementation of Agenda 21 at the national level;

e) To promote long-term technological partnerships between holders of environmentally sound technologies and potential users.

Activities

a) Development of international information networks which link national, subregional, regional and international systems

34.15 Existing national, subregional, regional and international information systems should be developed and linked through regional clearing-houses covering broad-based sectors of the economy such as agriculture, industry and energy. Such a network might, *inter alia*, include national, subregional and regional patent offices that are equipped to produce reports on state-of-the-art technology. The clearing-house networks would disseminate information on available technologies, their sources, their environmental risks, and the broad terms under which they may be acquired. They would operate on an information-demand basis and focus on the information needs of the end-users. They would take into account the positive roles and contributions of international, regional and subregional organizations, business

communities, trade associations, non-governmental organizations, national Governments, and newly established or strengthened national networks.

34.16 The international and regional clearing-houses would take the initiative, where necessary, in helping users to identify their needs and in disseminating information that meets those needs, including the use of existing news, public information, and communication systems. The disseminated information would highlight and detail concrete cases where environmentally sound technologies were successfully developed and implemented. In order to be effective, the clearing-houses need to provide not only information, but also referrals to other services, including sources of advice, training, technologies and technology assessment. The clearing-houses would thus facilitate the establishment of joint ventures and partnerships of various kinds.

34.17 An inventory of existing and international or regional clearing-houses or information exchange systems should be undertaken by the relevant United Nations bodies. The existing structure should be strengthened and improved when necessary. Additional information systems should be developed, if necessary, in order to fill identified gaps in this international network.

Support of and promotion of access to transfer of technology

34.18 Governments and international organizations should promote, and encourage the private sector to promote, effective modalities for the access and transfer in particular to developing countries of environmentally sound technologies by activities, including the following:

(a) Formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain;
(b) Creation of favourable conditions to encourage the private and public sectors to innovate, market and use environmentally sound technologies;
(c) Examination by Governments and, where appropriate, by relevant organizations of existing policies, including subsidies and tax policies, and regulations to determine whether they encourage or impede the access to, transfer of and introduction of environmentally sound technologies;
(d) Addressing, in a framework which fully integrates environment and development, barriers to the transfer of privately owned environmentally sound technologies and adoption of appropriate general measures to reduce such barriers while creating specific incentives, fiscal or otherwise, for the transfer of such technologies;
(e) In compliance with and under the specific circumstances recognized by the relevant international conventions adhered to by States, undertaking measures to prevent the abuse of intellectual property rights, including rules with respect to their acquisition through compulsory licensing, with the provision of equitable and adequate compensation.

(i) creation and enhancement by developed countries, as well as other countries which might be in a position to do so, of appropriate incentives, fiscal or otherwise, to stimulate the transfer of

environmentally sound technology by companies, in particular to developing countries, as integral to sustainable development;

(ii) enhance the access to and transfer of patent protected environmentally sound technologies, in particular to developing countries;

(iii) purchase of patents and licences on commercial terms for their transfer to developing countries on non-commercial terms as part of development cooperation for sustainable development, taking into account the need to protect intellectual property rights;

(iv) in compliance with and under the specific circumstances recognized by the relevant international conventions adhered to by States, undertaking measures to prevent the abuse of intellectual property rights, including rules with respect to their acquisition through compulsory licensing, with the provision of equitable and adequate compensation.

(v) provision of financial resources to acquire environmentally sound technologies in order to enable in particular developing countries to implement measures to promote sustainable development that would entail a special or abnormal burden to them;

Establishment of a collaborative network of research centres

34.21 A collaborative network of national, subregional, regional and international research centres on environmentally sound technology should be established to enhance the access to and development, management and transfer of environmentally sound technologies, including transfer and cooperation among developing countries and between developed and developing countries, primarily based on existing subregional or regional research, development and demonstration centres which are linked with the national institutions, in close cooperation with the private sector.

Support for programmes of cooperation and assistance

34.22 Support should be provided for programmes of cooperation and assistance, including those provided by United Nations agencies, international organizations, and other appropriate public and private organizations, in particular to developing countries, in the areas of research and development, technological and human resources capacity-building in the fields of training, maintenance, national technology needs assessments, environmental impact assessments, and sustainable development planning.

34.23 Support should also be provided for national, subregional, regional, multilateral and bilateral programmes of scientific research, dissemination of information and technology development among developing countries, including through the involvement of both public and private enterprises and research facilities, as well as funding for technical cooperation among developing countries' programmes in this area. This should include developing links among these facilities to maximize their efficiency in understanding, disseminating and implementing technologies for sustainable development.

34.24 The development of global, regional and subregional programmes should include identification and evaluation of regional, subregional and national need-based priorities. Plans and studies supporting these programmes should provide the basis for potential financing by multilateral development banks, bilateral organizations, private sector interests and non-governmental organizations.

34.25 Visits should be sponsored and, on a voluntary basis, the return of qualified experts from developing countries in the field of environmentally sound technologies who are currently working in developed country institutions should be facilitated.

Technology assessment in support of the management of environmentally sound technology

34.26 The international community, in particular United Nations agencies, international organizations, and other appropriate and private organizations should help exchange experiences and develop capacity for technology needs assessment, in particular in developing countries, to enable them to make choices based on environmentally sound technologies. They should:

(a) Build up technology assessment capacity for the management of environmentally sound technology, including environmental impact and risk assessment, with due regard to appropriate safeguards on the transfer of technologies subject to prohibition on environmental or health grounds;

(b) Strengthen the international network of regional, subregional or national environmentally sound technology assessment centres, coupled with clearing-houses, to tap the technology assessment sources mentioned above for the benefit of all nations. These centres could, in principle, provide advice and training for specific national situations and promote the building up of national capacity in environmentally sound technology assessment. The possibility of assigning this activity to already existing regional organizations should be fully explored before creating entirely new institutions, and funding of this activity through public-private partnerships should also be explored, as appropriate.

Collaborative arrangements and partnerships

34.27 Long-term collaborative arrangements should be promoted between enterprises of developed and developing countries for the development of environmentally sound technologies. Multinational companies, as repositories of scarce technical skills needed for the protection and enhancement of the environment, have a special role and interest in promoting cooperation in and related to technology transfer, as they are important channels for such transfer, and for building a trained human resource pool and infrastructure.

34.28 Joint ventures should be promoted between suppliers and recipients of technologies, taking into account developing countries' policy priorities and objectives. Together with direct foreign investment, these ventures could constitute important channels of transferring environmentally sound technologies. Through such joint ventures and direct investment, sound environmental management practices could be transferred and maintained.

* * *

8. Decision on Measures in Favour of Least Developed Countries*

Recognizing the plight of the least-developed countries and the need to ensure their effective participation in the world trading system, and to take further measures to improve their trading opportunities;

Recognizing the specific needs of the least-developed countries in the area of market access where continued preferential access remains an essential means for improving their trading opportunities;

2. *Agree* that:

(iii) The rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the least-developed countries. To this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the least-developed countries in the appropriate Councils and Committees.

(v) Least-developed countries shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets.

* * *

* WTO Decision on Measures in Favour of Least Developed Countries (1994):
GATT /WTO (1994). *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts*, Sales No. GATT/1994/4, (Geneva: GATT secretariat); and
<http://www.wto.org/english/docs_e/legal_e/final_e.htm >

9. The OECD Guidelines for Multinational Enterprises*

I. DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES

27 June 2000

ADHERING GOVERNMENTS[20]

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries;

- That multinational enterprises play an important role in this investment process;

- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;

- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

DECLARE:

Guidelines for Multinational Enterprises	I.	That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto[21], having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;"
National Treatment	II.1.	That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws,

* The OECD Guidelines (2000):
OECD (2000) *The OECD Guidelines for Multinational Enterprises* (DAFFE/IME (2000) 20), Paris :OCDE; and <http://www.oecd.org/daf/investment/guidelines/minbooke.pdf>

20. As at 27 June 2000 adhering governments are those of all OECD Members, as well as Argentina, Brazil, Chile and the Slovak Republic. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.

21 . The text of the Guidelines for Multinational Enterprises is reproduced in Annex 1 of this booklet.

regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");

2. That adhering governments will consider applying "National Treatment" in respect of countries other than adhering governments;

3. That adhering governments will endeavour to ensure that their territorial subdivisions apply "National Treatment";

4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;

Conflicting Requirements

III. That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto[22].

International Investment Incentives and Disincentives

IV.1. That they recognise the need to strengthen their co-operation in the field of international direct investment;

2. That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment;

3. That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;

Consultation Procedures

V. That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;

Review

VI. That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

ANNEX 1

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

22. The text of General considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is reproduced in Annex 2 of this booklet.

Preface

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join OECD economies to each other and to the rest of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital in host countries.

V. Environment

[…]

6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:

Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;

[…]

VIII. Science and Technology

Enterprises should:

(1) Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.

(2) Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.

(3) When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.

(4) When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.

(5) Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

IX. Competition

Enterprises should, within the framework of applicable laws and regulations, conduct their activities in a competitive manner. In particular, enterprises should:

1. Refrain from entering into or carrying out anti-competitive agreements among competitors:

(a) To fix prices;
(b) To make rigged bids (collusive tenders);
(c) To establish output restrictions or quotas; or
(d) To share or divide markets by allocating customers, suppliers, territories or lines of commerce.

2. Conduct all of their activities in a manner consistent with all applicable competition laws, taking into account the applicability of the competition laws of jurisdictions whose economies would be likely to be harmed by anti-competitive activity on their part.

3. Co-operate with the competition authorities of such jurisdictions by, among other things and subject to applicable law and appropriate safeguards, providing as prompt and complete responses as practicable to requests for information.

4. Promote employee awareness of the importance of compliance with all applicable competition laws and policies.

X. Taxation

It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.

* * *

10. UNCTAD X Plan of Action*

Transfer of technology and know-how

78. The technological gap between developed and developing countries is wide and for most of them increasing. Technology flows tend to be associated with investment in and expansion of technologically sophisticated industries. A better understanding needs to be achieved of the various channels for transfer of technology, such as FDI and trade. Technology does not automatically flow from developed countries to developing countries. Reducing the technology gap requires efforts on the part of developing countries to acquire and cultivate technology, as well as efforts on the part of developed countries to transfer technology and know-how.

79. With the appearance of new technologies and liberalization of foreign investment, productive activities can be segmented and spread around the world in different locations, and thus more countries have potential opportunities to participate in international production and trade. But these opportunities are not easily tapped by all countries. Countries with a broad range of technological capabilities are better positioned to host specialized activities in the various segments of goods and services production. Created technological assets, in conjunction with appropriate policy and regulatory environments, more than traditional factor endowments, determine comparative advantage in today's knowledge-based world economy.

80. New technologies such as information technology and electronic commerce will revolutionize the way business is conducted and could provide SMEs with unprecedented access to global markets. At the same time, they could also endanger the survival and growth of some SMEs. Other technologies such as environmentally sound technologies, biotechnology and new materials development also present opportunities for developing countries provided they have access to these technologies and the skills, absorptive capacity and finance to adopt and adapt them. In addition, all countries should establish an adequate regulatory framework to provide effective protection of intellectual property.

81. Technological development is therefore important for the integration and participation of developing countries in the international trading system. Such development can be facilitated by domestic and international actions, including human resource development, establishment and strengthening of appropriate policy and legal frameworks and the competitive environment, encouraging the establishment of more sophisticated industries, establishment of science and technology institutes and infrastructure, encouragement of business support

* Plan of Action (2000):

services, and home country measures that encourage the transfer of technology, as well as environmentally sound technologies, to developing countries, in particular the least developed countries, on the terms laid down in Agenda 21 adopted at the Rio Summit.

82. There is need for an exchange of best practices and the provision of technical and, where possible, financial assistance to countries seeking to improve their technological capabilities. There is also need for the provision of advisory services to countries, and even firms, to help them articulate needs for specific technology, to acquire it knowledgeably and to use it effectively. Among the obstacles to effective transfer of technology to enterprises located in developing countries are the weak infrastructures, restricted financial resources and limited bargaining capacity of recipient enterprises**.**

83. There is need to help developing countries in assessing their technology needs, identifying technology suppliers and concluding mutually beneficial technology deals and partnerships in areas such as information technology, biotechnology and environmentally sound technologies.

84. The importance of transfer of technology to developing countries has been recognized in various forums. In the context of WTO, the TRIPS Agreement states that developed country members should provide incentives to their enterprises and institutions for the purpose of promoting and encouraging technology transfer to the least developed countries in order to enable them to create a sound and viable technological base.

* * *

"Plan of Action", Tenth session, Bangkok, 12-19 February 2000 (Geneva: United Nations), United Nations publication, No. TD/386, 18 February; and <http://www.unctad.org>

11. Programme of Action for the Least Developed Countries for the Decade 2001-2010*

Commitment 4: Building productive capacities to make globalization work for LDCs

42. The capacity of LDCs to accelerate growth and sustainable development is impeded by various structural and supply-side constraints. Among these constraints are low productivity; insufficient financial resources; inadequate physical and social infrastructure; lack of skilled human resources; degradation of the environment; weak institutional capacities, including trade support services, in both public and private sectors; low technological capacity; lack of an enabling environment to support entrepreneurship and promote public and private partnership; and lack of access of the poor, particularly women, to productive resources and services. Geographical handicaps faced by landlocked and island LDCs aggravate the impact of these impediments. Critical factors to stimulate productive capacity include: stable macro-economic conditions, a conducive legal and regulatory framework, adequate institutional, physical and social infrastructure and a vibrant private sector. An effective dialogue between government and the private sector, as well as policy consistency within trade, investment and enterprise development, is needed to underpin an enabling environment for economic development. It is also important to encourage and promote good corporate practices. Concrete support should be based upon the national programmes of action or poverty eradication strategies of LDCs.

B. Technology

49. Enterprises in LDCs are characterized by employment of low-level technologies, lack of resources to acquire new technologies, and low capability for upgrading old technologies or adapting and utilizing new ones when they are available. Transfer and diffusion of technology by transnational corporations could be promoted by conducive policies, regulatory transparency, market liberalization and improved absorptive capacity of local enterprises and by addressing the problems of high cost of technology and financial constraints. The very low level of technology in LDCs, including in the areas of new technologies such as ICTs, biotechnology and environmentally sound technologies, will need to be addressed through concerted actions by LDCs and their development partners. LDCs are facing the danger of increased marginalization as access to global networks, new information technologies and advanced services become driving forces of integration into the world economy. In this context, research and development, including, *inter alia* through the private sector, has a strategic role to play in strengthening know-how and building the necessary special knowledge base in LDCs to prevent a widening digital divide.

50. Actions by LDCs and the development partners will be along the following lines:

* Programme of Action for LDCs 2001-2010:
United Nations (2001). Programme of Action for the Least Developed Countries Adopted by the Third United Nations Conference on the Least Developed Countries in Brussels on 20 May 2001 (Geneva: UNCTAD), No. A/CONF.191/11 and <http://www.unctad.org/en/docs/aconf191d11.en.pdf>

(i) Actions by LDCs

(a) Articulating policies and measures to foster an enabling environment to facilitate the acquisition and development of technology and to enhance innovation capacity;
(b) Attracting FDI that is conducive to transfer of technology, and building up supply capabilities and promoting inter-firm, as well as horizontal and vertical linkages in order to foster the diffusion of new technologies within the economy while promoting its integration;
(c) Promoting appropriate and sustainable technologies by investing in local research and development and capacity-building programmes and by utilizing new and emerging technologies, including the Internet.

(ii) Actions by development partners

(a) Through financial, technical and/or other assistance, supporting LDCs' efforts to achieve levels of investment in infrastructure for education and training that are consistent with building local technological capabilities, including through innovative private partnerships;
(b) Assisting LDC firms to link up with firms in developed countries in ways that would play a catalytic role in LDC technological development;
(c) Considering innovative mechanisms with a view to according LDCs special treatment in facilitating acquisition, transfer and development of technology to help LDCs gain access to technology;
(d) Fostering concerted international partnership to bring the benefits of ICT to LDCs so as to improve connectivity and reduce the "digital divide";
(e) Promoting linkages between research and development institutions in the LDCs and their development partners;
(f) Complying fully with already existing multilateral commitments in the area of technology transfer, particularly by providing incentives as provided for and agreed in Article 66(2) of the TRIPS Agreement**;**
(g) Taking concrete measures to facilitate access to or provide technology and equipment *inter alia* as part of ODA.

C. Enterprise development

51. Production in most LDCs, particularly in the private sector, is dominated by smallholder farmers, small enterprises and the informal sector, including industrial and service enterprises which supply most basic goods and services and generate the greater part of employment and incomes. However, the majority of these enterprises have difficulties in expanding into medium and large-size firms, and usually lack sufficient skills and financial and non-financial business development services, access to finance, technology and managerial and entrepreneurial skills.

52. The private sector can play a crucial role in poverty eradication by contributing to economic growth and creating employment. Specific attention should be given to the needs of micro, small and medium-sized enterprises, including enterprises owned by female entrepreneurs, and to the development of a sustainable financial sector.

[…]

Commitment 7: Mobilizing financial resources

78. An enabling environment with peaceful solution of conflicts and respect for internationally recognized human rights, including the right to development, provides the best context for domestic and international resource mobilization. Equally, it requires the definition of a clear and consistent set of public objectives, sound macroeconomic policies, efficient management of public revenue and expenditure, better allocation of resources and incentives to prevent capital flight and to encourage private savings and tax reforms, and a solid framework to implement stabilization or economic reform programmes.

79. There is an immediate need to mobilize the financial resources that are required to implement the objectives and priorities as well as the targets that are set out in this Programme of Action aimed at the sustainable development of the LDCs. However, there is very limited scope, in the foreseeable future, to meet the multiple development finance requirements of LDCs with domestic resources because of sluggish growth or economic stagnation, widespread poverty and a weak domestic corporate sector. The large investment requirements of LDCs imply a need for new and additional resources, and efforts to increase ODA to LDCs supportive of national programmes of action, including poverty eradication strategies.

[…]

D. FDI and other private external flows

88. Long-term foreign private capital flows have a complementary and catalytic role to play in building domestic supply capacity as they lead to tangible and intangible benefits, including export growth, technology and skills transfer, employment generation and poverty eradication.

89. Policies to attract FDI are essential components of national development strategies. In this context, a stable economic, legal and institutional framework is crucial in order to attract foreign investment and to promote sustainable development through investment. In this regard a conducive international financial environment is also crucial.

90. Promoting a conducive macro-economic environment, good governance and democracy, as well as strengthening structural aspects of the economy and improved institutional and human capacities are important also in the context of attracting FDI and other private external flows. Development partners would need to provide a range of support measures, complementing LDCs' efforts to attract FDI.

91. Action by LDCs and the development partners will be along the following lines:

(i) Action by LDCs

(a) Strengthening the enabling environment for private sector development and foreign investment flows; of particular importance is a supportive regulatory and legal framework for new and existing FDI along with the necessary institutional infrastructure and capacity to implement and maintain it;
(b) Designing and implementing policies that reduce risks which deter foreign investment, including through the negotiation of bilateral and regional investment

treaties and accession to international conventions providing investment guarantees and insurance, as well as dispute settlement;

(c) Attracting foreign capital, especially FDI, towards the building of supply capacity;

(d) Encouraging linkages between domestic businesses and foreign affiliates with a view towards helping to disseminate appropriately tangible and intangible assets, including technology, to domestic enterprises;

(e) Taking appropriate action for the avoidance of double taxation;

(f) Improving the timely availability, as well as reliability, of investment information and statistics, including those related to investment opportunities and the regulatory framework.

(ii) Action by development partners

(a) Encouraging increased non-official flows, including investment flows, to LDCs;

(b) Supporting LDCs in devising and implementing appropriate FDI strategies and policy frameworks and institutions through the development of a comprehensive approach to FDI and actions aimed at improving the regulatory framework and the availability of reliable investment information;

(c) Supporting LDCs efforts to attract foreign businesses and their affiliates, encouraging the appropriate dissemination of tangible and intangible assets, including technology, to domestic enterprises in LDCs;

(d) Assisting LDCs in human resource development so as to enable them to attract and benefit from FDI and to participate effectively in negotiations on international agreements in this regard;

(e) Supporting LDCs' efforts towards infrastructure development to attract FDI flows;

(f) Identifying and implementing best practices for encouraging and facilitating FDI to LDCs;

(g) Supporting initiatives in the development of public and private venture capital funds for LDCs;

(h) Assisting LDCs in establishing foreign investment advisory bodies in their own countries, as a one-stop shop which would be responsible for providing information, service and administrative support to potential foreign investors;

(i) Improving coordination among relevant international organizations on advisory services for investment to the LDCs with possible participation of the private sector *inter alia* by supporting global investment advisory services;

(j) Facilitating FDI flows to LDCs by underwriting, as appropriate, perceived political and commercial risks in these countries

* * *

12. Third Summit of the Americas - Plan of Action*

Science and Technology

Promote the popularization of science and technology necessary to advance the establishment and consolidation of a scientific culture in the region; and stimulate the development of science and technology for regional connectivity through information and communications technologies essential for building knowledge-based societies;

Support the development of high-level human capital for the development of science and technology research and innovation that would encourage the strengthening of the agricultural, industrial, commercial and business sectors as well as the sustainability of the environment;

Promote, with the support of existing cooperation mechanisms, the development of the regional program of science and technology indicators;

Endeavor to implement and follow up on the scientific and technological activities mentioned above, counting on the support of hemispheric cooperation and coordination mechanisms related to this field;

* * *

* Quebec Plan of Action (2001): <http://www.summit-americas.org/eng/quebec-summit1.htm>

II. REGIONAL LEVEL

1. The Treaty Establishing the European Community*

Article 81 (ex Article 85)

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82 (ex Article 86)

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

* Treaty of Rome (1957):
Official Journal of the European Communities C 340, 10.11.1997, p. 173 (Amsterdam version); and
<http://europa.eu.int/eur-lex/en/treaties>

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

* * *

2. European Commission Regulation (EC) No. 240/96*

4. This Regulation should apply to the licensing of Member States' own patents, Community patents (6) and European patents (7) ("pure" patent licensing agreements). It should also apply to agreements for the licensing of non-patented technical information such as descriptions of manufacturing processes, recipes, formulae, designs or drawings, commonly termed "know-how" ("pure" know-how licensing agreements), and to combined patent and know-how licensing agreements ('mixed` agreements), which are playing an increasingly important role in the transfer of technology. For the purposes of this Regulation, a number of terms are defined in Article 10.

5. Patent or know-how licensing agreements are agreements whereby one undertaking which holds a patent or know-how ("the licensor") permits another undertaking ("the licensee") to exploit the patent thereby licensed, or communicates the know-how to it, in particular for purposes of manufacture, use or putting on the market. In the light of experience acquired so far, it is possible to define a category of licensing agreements covering all or part of the common market which are capable of falling within the scope of Article 85 (1) but which can normally be regarded as satisfying the conditions laid down in Article 85 (3), where patents are necessary for the achievement of the objects of the licensed technology by a mixed agreement or where know-how - whether it is ancillary to patents or independent of them - is secret, substantial and identified in any appropriate form. These criteria are intended only to ensure that the licensing of the know-how or the grant of the patent licence justifies a block exemption of obligations restricting competition. This is without prejudice to the right of the parties to include in the contract provisions regarding other obligations, such as the obligation to pay royalties, even if the block exemption no longer applies.

6. It is appropriate to extend the scope of this Regulation to pure or mixed agreements containing the licensing of intellectual property rights other than patents (in particular, trademarks, design rights and copyright, especially software protection), when such additional licensing contributes to the achievement of the objects of the licensed technology and contains only ancillary provisions.

7. Where such pure or mixed licensing agreements contain not only obligations relating to territories within the common market but also obligations relating to non-member countries, the presence of the latter does not prevent this Regulation from applying to the obligations relating to territories within the common market. Where licensing agreements for non-member countries or for territories which extend beyond the frontiers of the Community have effects within the common market which may fall within the scope of Article 85 (1), such agreements should be covered by this Regulation to the same extent as would agreements for territories within the common market.

8. The objective being to facilitate the dissemination of technology and the improvement of manufacturing processes, this Regulation should apply only where the licensee himself manufactures the licensed products or has them manufactured for his account, or where the licensed product is a service, provides the service himself or has the

* EC Regulation No. 240/96 (1996):
Official Journal of the European Communities NO. L 031 , 09/02/1996 P. 0002 – 0013 and
<http://www.europa.eu.int/eur-lex/en/lif/dat/1996/en_396R0240.html>

service provided for his account, irrespective of whether or not the licensee is also entitled to use confidential information provided by the licensor for the promotion and sale of the licensed product. The scope of this Regulation should therefore exclude agreements solely for the purpose of sale. Also to be excluded from the scope of this Regulation are agreements relating to marketing know-how communicated in the context of franchising arrangements and certain licensing agreements entered into in connection with arrangements such as joint ventures or patent pools and other arrangements in which a licence is granted in exchange for other licences not related to improvements to or new applications of the licensed technology. Such agreements pose different problems which cannot at present be dealt with in a single regulation (Article 5).
[…]

19. This Regulation must also specify what restrictions or provisions may not be included in licensing agreements if these are to benefit from the block exemption. The restrictions listed in Article 3 may fall under the prohibition of Article 85 (1), but in their case there can be no general presumption that, although they relate to the transfer of technology, they will lead to the positive effects required by Article 85 (3), as would be necessary for the granting of a block exemption. Such restrictions can be declared exempt only by an individual decision, taking account of the market position of the undertakings concerned and the degree of concentration on the relevant market.
[…]

21 The list of clauses which do not prevent exemption also includes an obligation on the licensee to keep paying royalties until the end of the agreement independently of whether or not the licensed know-how has entered into the public domain through the action of third parties or of the licensee himself (Article 2 (1) (7)). Moreover, the parties must be free, in order to facilitate payment, to spread the royalty payments for the use of the licensed technology over a period extending beyond the duration of the licensed patents, in particular by setting lower royalty rates. As a rule, parties do not need to be protected against the foreseeable financial consequences of an agreement freely entered into, and they should therefore be free to choose the appropriate means of financing the technology transfer and sharing between them the risks of such use. However, the setting of rates of royalty so as to achieve one of the restrictions listed in Article 3 renders the agreement ineligible for the block exemption.
[…]

22 An obligation on the licensee to restrict his exploitation of the licensed technology to one or more technical fields of application ('fields of use`) or to one or more product markets is not caught by Article 85 (1) either, since the licensor is entitled to transfer the technology only for a limited purpose.
[…]

24 Besides the clauses already mentioned, the list of restrictions which render the block exemption inapplicable also includes restrictions regarding the selling prices of the licensed product or the quantities to be manufactured or sold, since they seriously limit the extent to which the licensee can exploit the licensed technology and since quantity restrictions particularly may have the same effect as export bans (Article 3 (1) and (5)). This does not apply where a licence is granted for use of the technology in specific production facilities and where both a specific technology is communicated for the setting-up, operation and maintenance of these facilities and the licensee is allowed to increase the capacity of the

facilities or to set up further facilities for its own use on normal commercial terms. On the other hand, the licensee may lawfully be prevented from using the transferred technology to set up facilities for third parties, since the purpose of the agreement is not to permit the licensee to give other producers access to the licensor's technology while it remains secret or protected by patent (Article 2 (1) (12)).

Article 1

1. Pursuant to Article 85 (3) of the Treaty and subject to the conditions set out below, it is hereby declared that Article 85 (1) of the Treaty shall not apply to pure patent licensing or know-how licensing agreements and to mixed patent and know-how licensing agreements, including those agreements containing ancillary provisions relating to intellectual property rights other than patents, to which only two undertakings are party and which include one or more of the following obligations:

(a) an obligation on the licensor not to license other undertakings to exploit the licensed technology in the licensed territory;
(b) an obligation on the licensor not to exploit the licensed technology in the licensed territory himself;
(c) an obligation on the licensee not to exploit the licensed technology in the territory of the licensor within the common market;
(d) an obligation on the licensee not to manufacture or use the licensed product, or use the licensed process, in territories within the common market which are licensed to other licensees;
(e) an obligation on the licensee not to pursue an active policy of putting the licensed product on the market in the territories within the common market which are licensed to other licensees, and in particular not to engage in advertising specifically aimed at those territories or to establish any branch or maintain an distribution depot there;
(f) an obligation on the licensee not to put the licensed product on the market in the territories licensed to other licensees within the common market in response to unsolicited orders;
(g) an obligation on the licensee to use only the licensor's trademark or get up to distinguish the licensed product during the term of the agreement, provided that the licensee is not prevented from identifying himself as the manufacturer of the licensed products;
(i) obligation on the licensee to limit his production of the licensed product to the quantities he requires in manufacturing his own products and to sell the licensed product only as an integral part of or a replacement part for his own products or otherwise in connection with the sale of his own products, provided that such quantities are freely determined by the licensee.

2. Where the agreement is a pure patent licensing agreement, the exemption of the obligations referred to in paragraph 1 is granted only to the extent that and for as long as the licensed product is protected by parallel patents, in the territories respectively of the licensee (points (1), (2), (7) and (8)), the licensor (point (3)) and other licensees (points (4) and (5). The exemption of the obligation referred to in point (6) of paragraph 1 is granted for a period not exceeding five years from the date when the licensed product is first put on the market within the common market by one of the licensees, to the extent that and for as long as, in these territories, this product is protected by parallel patents.

3. Where the agreement is a pure know-how licensing agreement, the period for which the exemption of the obligations referred to in points (1) to (5) of paragraph 1 is granted may not exceed ten years from the date when the licensed product is first put on the market within the common market by one of the licensees. The exemption of the obligation referred to in point (6) of paragraph 1 is granted for a period not exceeding five years from the date when the licensed product is first put on the market within the common market by one of the licensees. The obligations referred to in points (7) and (8) of paragraph 1 are exempted during the lifetime of the agreement for as long as the know-how remains secret and substantial. However, the exemption in paragraph 1 shall apply only where the parties have identified in any appropriate form the initial know-how and any subsequent improvements to it which become available to one party and are communicated to the other party pursuant to the terms of the agreement and to the purpose thereof, and only for as long as the know-how remains secret and substantial.

4. Where the agreement is a mixed patent and know-how licensing agreement, the exemption of the obligations referred to in points (1) to (5) of paragraph 1 shall apply in Member States in which the licensed technology is protected by necessary patents for as long as the licensed product is protected in those Member States by such patents if the duration of such protection exceeds the periods specified in paragraph 3.The duration of the exemption provided in point (6) of paragraph 1 may not exceed the five-year period provided for in paragraphs 2 and 3.However, such agreements qualify for the exemption referred to in paragraph 1 only for as long as the patents remain in force or to the extent that the know-how is identified and for as long as it remains secret and substantial whichever period is the longer.

5. The exemption provided for in paragraph 1 shall also apply where in a particular agreement the parties undertake obligations of the types referred to in that paragraph but with a more limited scope than is permitted by that paragraph.

Article 2

1. Article 1 shall apply notwithstanding the presence in particular of any of the following clauses, which are generally not restrictive of competition:

(1) an obligation on the licensee not to divulge the know-how communicated by the licensor; the licensee may be held to this obligation after the agreement has expired;
(2) an obligation on the licensee not to grant sublicences or assign the licence;
(3) an obligation on the licensee not to exploit the licensed know-how or patents after termination of the agreement in so far and as long as the know-how is still secret or the patents are still in force;
(4) an obligation on the licensee to grant to the licensor a licence in respect of his own improvements to or his new applications of the licensed technology, provided:

?? that, in the case of severable improvements, such a licence is not exclusive, so that the licensee is free to use his own improvements or to license them to third parties, in so far as that does not involve

disclosure of the know-how communicated by the licensor that is still secret,

?? and that the licensor undertakes to grant an exclusive or non-exclusive licence of his own improvements to the licensee;

(5) an obligation on the licensee to observe minimum quality specifications, including technical specifications, for the licensed product or to procure goods or services from the licensor or from an undertaking designated by the licensor, in so far as these quality specifications, products or services are necessary for:

(a) a technically proper exploitation of the licensed technology; or
(b) ensuring that the product of the licensee conforms to the minimum quality specifications that are applicable to the licensor and other licensees; and to allow the licensor to carry out related checks;

(6) obligations:

(a) to inform the licensor of misappropriation of the know-how or of infringements of the licensed patents; or
(b) to take or to assist the licensor in taking legal action against such misappropriation or infringements;

(7) an obligation on the licensee to continue paying the royalties:

(a) until the end of the agreement in the amounts, for the periods and according to the methods freely determined by the parties, in the event of the know-how becoming publicly known other than by action of the licensor, without prejudice to the payment of any additional damages in the event of the know-how becoming publicly known by the action of the licensee in breach of the agreement;
(b) over a period going beyond the duration of the licensed patents, in order to facilitate payment;

(8) an obligation on the licensee to restrict his exploitation of the licensed technology to one or more technical fields of application covered by the licensed technology or to one or more product markets;

(9) an obligation on the licensee to pay a minimum royalty or to produce a minimum quantity of the licensed product or to carry out a minimum number of operations exploiting the licensed technology;

(10) an obligation on the licensor to grant the licensee any more favourable terms that the licensor may grant to another undertaking after the agreement is entered into;

(11) an obligation on the licensee to mark the licensed product with an indication of the licensor's name or of the licensed patent;

(12) an obligation on the licensee not to use the licensor's technology to construct facilities for third parties; this is without prejudice to the right of the licensee to increase the capacity of his facilities or to set up additional facilities for his own use on normal commercial terms, including the payment of additional royalties;

(13) an obligation on the licensee to supply only a limited quantity of the licensed product to a particular customer, where the licence was granted so that the customer might have a second source of supply inside the licensed territory; this provision shall also apply where the customer is the licensee, and the licence which was granted in order to provide a second source of supply provides that the customer is himself to manufacture the licensed products or to have them manufactured by a subcontractor;

(14) a reservation by the licensor of the right to exercise the rights conferred by a patent to oppose the exploitation of the technology by the licensee outside the licensed territory;

(15) a reservation by the licensor of the right to terminate the agreement if the licensee contests the secret or substantial nature of the licensed know-how or challenges the validity of licensed patents within the common market belonging to the licensor or undertakings connected with him;
a reservation by the licensor of the right to terminate the licence agreement of a patent if the licensee raises the claim that such a patent is not necessary;

(17) an obligation on the licensee to use his best endeavours to manufacture and market the licensed product;

(18) a reservation by the licensor of the right to terminate the exclusivity granted to the licensee and to stop licensing improvements to him when the licensee enters into competition within the common market with the licensor, with undertakings connected with the licensor or with other undertakings in respect of research and development, production, use or distribution of competing products, and to require the licensee to prove that the licensed know-how is not being used for the production of products and the provision of services other than those licensed.

2. In the event that, because of particular circumstances, the clauses referred to in paragraph 1 fall within the scope of Article 85 (1), they shall also be exempted even if they are not accompanied by any of the obligations exempted by Article 1.

3. The exemption in paragraph 2 shall also apply where an agreement contains clauses of the types referred to in paragraph 1 but with a more limited scope than is permitted by that paragraph.

Article 3

Article 1 and Article 2 (2) shall not apply where:

(1) One party is restricted in the determination of prices, components of prices or discounts for the licensed products;

(2) One party is restricted from competing within the common market with the other party, with undertakings connected with the other party or with other undertakings in respect of research and development, production, use or distribution of competing products without prejudice to the provisions of Article 2 (1) (17) and (18);

(3) One or both of the parties are required without any objectively justified reason:

(a) to refuse to meet orders from users or resellers in their respective territories who would market products in other territories within the common market;
(b) to make it difficult for users or resellers to obtain the products from other resellers within the common market, and in particular to exercise intellectual property rights or take measures so as to prevent users or resellers from obtaining outside, or from putting on the market in the licensed territory products which have been lawfully put on the market within the common market by the licensor or with his consent; or do so as a result of a concerted practice between them;

(4) The parties were already competing manufacturers before the grant of the licence and one of them is restricted, within the same technical field of use or within the same product market, as to the customers he may serve, in particular by being prohibited from supplying certain classes of user, employing certain forms of distribution or, with the aim of sharing customers, using certain types of packaging for the products, save as provided in Article 1 (1) (7) and Article 2 (1) (13);

(5) The quantity of the licensed products one party may manufacture or sell or the number of operations exploiting the licensed technology he may carry out are subject to limitations, save as provided in Article (1) (8) and Article 2 (1) (13);

(6) The licensee is obliged to assign in whole or in part to the licensor rights to improvements to or new applications of the licensed technology;

(7) The licensor is required, albeit in separate agreements or through automatic prolongation of the initial duration of the agreement by the inclusion of any new improvements, for a period exceeding that referred to in Article 1 (2) and (3) not to license other undertakings to exploit the licensed technology in the licensed territory, or a party is required for a period exceeding that referred to in Article 1 (2) and (3) or Article 1 (4) not to exploit the licensed technology in the territory of the other party or of other licensees.

Article 4

1. The exemption provided for in Articles 1 and 2 shall also apply to agreements containing obligations restrictive of competition which are not covered by those Articles and do not fall within the scope of Article 3, on condition that the agreements in question are notified to the Commission in accordance with the provisions of Articles 1, 2 and 3 of Regulation (EC) No 3385/94 and that the Commission does not oppose such exemption within a period of four months.

2. Paragraph 1 shall apply, in particular, where:

(a) the licensee is obliged at the time the agreement is entered into to accept quality specifications or further licences or to procure goods or services which are not necessary for a technically satisfactory exploitation of the licensed technology or for ensuring that the production of the licensee conforms to the quality standards that are respected by the licensor and other licensees;
(b) the licensee is prohibited from contesting the secrecy or the substantiality of the licensed know-how or from challenging the validity of patents licensed within the common market belonging to the licensor or undertakings connected with him.

3. The period of four months referred to in paragraph 1 shall run from the date on which the notification takes effect in accordance with Article 4 of Regulation (EC) No 3385/94.

4. The benefit of paragraphs 1 and 2 may be claimed for agreements notified before the entry into force of this Regulation by submitting a communication to the Commission referring expressly to this Article and to the notification. Paragraph 3 shall apply mutatis mutandis.

5. The Commission may oppose the exemption within a period of four months. It shall oppose exemption if it receives a request to do so from a Member State within two months of the transmission to the Member State of the notification referred to in paragraph 1 or of the communication referred to in paragraph 4. This request must be justified on the basis of considerations relating to the competition rules of the Treaty.

6. The Commission may withdraw the opposition to the exemption at any time. However, where the opposition was raised at the request of a Member State and this request is maintained, it may be withdrawn only after consultation of the Advisory Committee on Restrictive Practices and Dominant Positions.

7. If the opposition is withdrawn because the undertakings concerned have shown that the conditions of Article 85 (3) are satisfied, the exemption shall apply from the date of notification.

8. If the opposition is withdrawn because the undertakings concerned have amended the agreement so that the conditions of Article 85 (3) are satisfied, the exemption shall apply from the date on which the amendments take effect.

9. If the Commission opposes exemption and the opposition is not withdrawn, the effects of the notification shall be governed by the provisions of Regulation No 17.

Article 5

1. This Regulation shall not apply to:

(a) agreements between members of a patent or know-how pool which relate to the pooled technologies;

(b) licensing agreements between competing undertakings which hold interests in a joint venture, or between one of them and the joint venture, if the licensing agreements relate to the activities of the joint venture;
(c) agreements under which one party grants the other a patent and/or know-how licence and in exchange the other party, albeit in separate agreements or through connected undertakings, grants the first party a patent, trademark or know-how licence or exclusive sales rights, where the parties are competitors in relation to the products covered by those agreements;
(d) licensing agreements containing provisions relating to intellectual property rights other than patents which are not ancillary;
(e) agreements entered into solely for the purpose of sale.

2. This Regulation shall nevertheless apply:

(a) to agreements to which paragraph 1 (2) applies, under which a parent undertaking grants the joint venture a patent or know-how licence, provided that the licensed products and the other goods and services of the participating undertakings which are considered by users to be interchangeable or substitutable in view of their characteristics, price and intended use represent:

?? in case of a licence limited to production, not more than 20 percent, and
?? in case of a licence covering production and distribution, not more than 10 percent; of the market for the licensed products and all interchangeable or substitutable goods and services;

(b) to agreements to which paragraph 1 (1) applies and to reciprocal licences within the meaning of paragraph 1 (3), provided the parties are not subject to any territorial restriction within the common market with regard to the manufacture, use or putting on the market of the licensed products or to the use of the licensed or pooled technologies.

3. This Regulation shall continue to apply where, for two consecutive financial years, the market shares in paragraph 2 (1) are not exceeded by more than one-tenth; where that limit is exceeded, this Regulation shall continue to apply for a period of six months from the end of the year in which the limit was exceeded.

Article 6

This Regulation shall also apply to:

1. agreements where the licensor is not the holder of the know-how or the patentee, but is authorized by the holder or the patentee to grant a licence;

2. assignments of know-how, patents or both where the risk associated with exploitation remains with the assignor, in particular where the sum payable in consideration of the assignment is dependent on the turnover obtained by the assignee in respect of products made using the know-how or the patents, the quantity of such products manufactured or the number of operations carried out employing the know-how or the patents;

3. licensing agreements in which the rights or obligations of the licensor or the licensee are assumed by undertakings connected with them.

Article 7

The Commission may withdraw the benefit of this Regulation, pursuant to Article 7 of Regulation No 19/65/EEC, where it finds in a particular case that an agreement exempted by this Regulation nevertheless has certain effects which are incompatible with the conditions laid down in Article 85 (3) of the Treaty, and in particular where:

1. the effect of the agreement is to prevent the licensed products from being exposed to effective competition in the licensed territory from identical goods or services or from goods or services considered by users as interchangeable or substitutable in view of their characteristics, price and intended use, which may in particular occur where the licensee's market share exceeds 40 percent;
2. without prejudice to Article 1 (1) (6), the licensee refuses, without any objectively justified reason, to meet unsolicited orders from users or resellers in the territory of other licensees;

3. the parties:

(a) without any objectively justified reason, refuse to meet orders from users or resellers in their respective territories who would market the products in other territories within the common market; or
(b) make it difficult for users or resellers to obtain the products from other resellers within the common market, and in particular where they exercise intellectual property rights or take measures so as to prevent resellers or users from obtaining outside, or from putting on the market in the licensed territory products which have been lawfully put on the market within the common market by the licensor or with his consent;

4. the parties were competing manufacturers at the date of the grant of the licence and obligations on the licensee to produce a minimum quantity or to use his best endeavours as referred to in Article 2 (1), (9) and (17) respectively have the effect of preventing the licensee from using competing technologies.

Article 8

1. For purposes of this Regulation:

(a) patent applications;
(b) utility models;
(c) applications for registration of utility models;
(d) topographies of semiconductor products;
(e) certificates d'utilité and certificates addition under French law;
(f) applications for certificates d'utilité and certificates addition under French law;
(g) supplementary protection certificates for medicinal products or other products for which such supplementary protection certificates may be obtained;
(h) plant breeder's certificates, shall be deemed to be patents.

2. This Regulation shall also apply to agreements relating to the exploitation of an invention if an application within the meaning of paragraph 1 is made in respect of the invention for a licensed territory after the date when the agreements were entered into but within the time-limits set by the national law or the international convention to be applied.

3. This Regulation shall furthermore apply to pure patent or know-how licensing agreements or to mixed agreements whose initial duration is automatically prolonged by the inclusion of any new improvements, whether patented or not, communicated by the licensor, provided that the licensee has the right to refuse such improvements or each party has the right to terminate the agreement at the expiry of the initial term of an agreement and at least every three years thereafter.

Article 10

For purposes of this Regulation:

(1) "know-how" means a body of technical information that is secret, substantial and identified in any appropriate form;

(2) "secret" means that the know-how package as a body or in the precise configuration and assembly of its components is not generally known or easily accessible, so that part of its value consists in the lead which the licensee gains when it is communicated to him; it is not limited to the narrow sense that each individual component of the know-how should be totally unknown or unobtainable outside the licensor's business;

(3) "substantial" means that the know-how includes information which must be useful, i.e. can reasonably be expected at the date of conclusion of the agreement to be capable of improving the competitive position of the licensee, for example by helping him to enter a new market or giving him an advantage in competition with other manufacturers or providers of services who do not have access to the licensed secret know-how or other comparable secret know-how;

(4) "identified" means that the know-how is described or recorded in such a manner as to make it possible to verify that it satisfies the criteria of secrecy and substantiality and to ensure that the licensee is not unduly restricted in his exploitation of his own technology, to be identified the know-how can either be set out in the licence agreement or in a separate document or recorded in any other appropriate form at the latest when the know-how is transferred or shortly thereafter, provided that the separate document or other record can be made available if the need arises;

(5) "necessary patents" are patents where a licence under the patent is necessary for the putting into effect of the licensed technology in so far as, in the absence of such a licence, the realization of the licensed technology would not be possible or would by possible only to a lesser extent or in more difficult or costly conditions. Such patents must therefore be of technical, legal or economic interest to the licensee;

(6) "licensing agreement" means pure patent licensing agreements and pure know-how licensing agreements as well as mixed patent and know-how licensing agreements;

(7) "licensed technology" means the initial manufacturing know-how or the necessary product and process patents, or both, existing at the time the first licensing agreement is concluded, and improvements subsequently made to the know-how or patents, irrespective of whether and to what extent they are exploited by the parties or by other licensees;

(8) "the licensed products" are goods or services the production or provision of which requires the use of the licensed technology;

(9) "the licensee's market share" means the proportion which the licensed products and other goods or services provided by the licensee, which are considered by users to be interchangeable or substitutable for the licensed products in view of their characteristics, price and intended use, represent the entire market for the licensed products and all other interchangeable or substitutable goods and services in the common market or a substantial part of it;

(10) *"exploitation"* refers to any use of the licensed technology in particular in the production, active or passive sales in a territory even if not coupled with manufacture in that territory, or leasing of the licensed products;

(11) "the licensed territory" is the territory covering all or at least part of the common market where the licensee is entitled to exploit the licensed technology;

(12) "territory of the licensor" means territories in which the licensor has not granted any licences for patents and/or know-how covered by the licensing agreement;

(13) "parallel patents" means patents which, in spite of the divergences which remain in the absence of any unification of national rules concerning industrial property, protect the same invention in various Member States;

(14) "connected undertakings" means:

(a) undertakings in which a party to the agreement, directly or indirectly:
owns more than half the capital or business assets, or

- has the power to exercise more than half the voting rights, or
- has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking, or
- has the right to manage the affairs of the undertaking;

(b) undertakings which, directly or indirectly, have in or over a party to the agreement the rights or powers listed in (a);

(c) undertakings in which an undertaking referred to in (b), directly or indirectly, has the rights or powers listed in (a);

(d) undertakings in which the parties to the agreement or undertakings connected with them jointly have the rights or powers listed in (a): such jointly controlled undertakings are considered to be connected with each of the parties to the agreement;

(15) “ancillary provisions” are provisions relating to the exploitation of intellectual property rights other than patents, which contain no obligations restrictive of competition other than those also attached to the licensed know-how or patents and exempted under this Regulation;

(16) “obligation” means both contractual obligation and a concerted practice;

(17) “competing manufacturers” or manufacturers of 'competing products` means manufacturers who sell products which, in view of their characteristics, price and intended use, are considered by users to be interchangeable or substitutable for the licensed products.

* * *

3. Treaty Establishing the Caribbean Community*

PREAMBLE

The Governments of the contracting States,

[…]
Conscious that these objectives can most rapidly be attained by the optimum utilisation of available human and natural resources of the Region; by accelerated, coordinated and sustained economic development, particularly through the exercise of permanent sovereignty over their natural resources; by the efficient operation of common services and functional cooperation in the social, cultural, educational and technological fields; and by a common front in relation to the external world;

Article 4
Objectives of the Community

The Community shall have as its objectives:
[…]

(c) functional cooperation, including
[…]

(ii) the promotion of greater understanding among its peoples and the advancement of their social, cultural and technological development;

* * *

* Caribbean Community Treaty (1973):
Caribbean Common Market Secretariat (1973). *Treaty establishing the Caribbean Community* (Georgetown: Caribbean Community Secretariat) and <http://www.caricom.org/expframes2.htm>

4. Protocol III and Protocol V Amending the Treaty Establishing the Caribbean Community*

PROTOCOL III : INDUSTRIAL POLICY

[…]
Mindful of the imperatives of research and development and technology transfer and adaptation for the competitiveness of Community enterprises on a sustainable basis;
[…]

ARTICLE VIII
Replace Article 44 with the following:
Article 43
Research and Development

1. The COTED shall promote market-led research, technological development and adaptation of appropriate technology in the Community in order to support the production, on a sustainable basis, of goods and services in Member States with a view to diversifying such production and enhancing its international competitiveness.

2. In the discharge of its mandate set out in paragraph 1 of this Article, the COTED shall adopt measures to encourage, *inter alia*, inventions and innovation, and acquisition, transfer, assimilation, adaptation and diffusion of technologies in the Community. Without prejudice to the generality of the foregoing, the COTED shall:

(a) encourage public and private sector agencies, research establishments and tertiary institutions in their research and technological development activities and assist in identifying sources of funding for such activities;
(b) promote co-operation in research and technological development among Member States and with third States and competent international organisations;
(c) facilitate co-operation:
    (i) in training;
    (ii) in the exchange of scientific and technical information among competent institutions;
    (iii) in the free movement of researchers in the Community;
    (iv) among private sector enterprises to integrate the results of research and development in the production process;
(d) develop and implement technological policies and strategies, having due regard for the importance of technology management and protection of intellectual property rights;
(e) facilitate access by Community nationals to technological and research facilities of Member States; and
(f) promote the development of technology extension services.

* Protocol III and Protocol V (1998):
Caribbean Common Market Secretariat (1973). *Treaty Establishing the Caribbean Community* (Georgetown: Caribbean Community Secretariat); and <http://www.caricom.org/treaty.html>

ARTICLE IX
Insert new Article to read as follows:
Article 44
Protection of Intellectual Property Rights

The COTED shall promote the protection of intellectual property rights within the Community by, *inter alia*:

(a) the strengthening of regimes for the protection of intellectual property rights and the simplification of registration procedures in Member States;
(b) the establishment of a regional administration for patents, trademarks and copyright;
(c) the identification and establishment, by Member States of mechanisms to ensure:

(i) the use of protected works and industrial property for the enhanced benefit of Member States;
(ii) the preservation of indigenous Caribbean culture; and
(iii) the legal protection of the expressions of folklore, other traditional knowledge and national heritage, particularly of indigenous populations in the Community;

(d) increased dissemination and use of patent documentation as a source of technological information;

(e) public education;

(f) measures to prevent the abuse of intellectual property rights by rights-holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and

(g) participation by Member States in international regimes for the protection of intellectual property rights.

PROTOCOL V : AGRICULTURAL POLICY

Recognising the importance of agriculture, including crops, livestock, fisheries and forestry for regional food and nutrition security and the economic and social development of the peoples of the Community;

Conscious that globalisation and liberalisation have important implications for the international competitiveness of the agricultural sector;

Convinced of the need to improve agricultural production and productivity, and strengthen the linkages between the agricultural sector and other sectors of the Single Market and Economy;

[…]

Determined to effect a fundamental transformation of the agricultural sector of the Community by diversifying agricultural production, intensifying agro-industrial development, expanding agri-business, and generally conducting agricultural production on a market-oriented, internationally competitive and environmentally sound basis;

Article 48d
Research, Development and Use of Technology

1. The Community shall promote and encourage research and development, and the adaptation, diffusion and transfer of appropriate technologies in order to achieve increased production and productivity.

2. The Community shall, in collaboration with competent public and private sector research and development institutions, encourage and assist Member States:

(a) to facilitate access to and use of new and appropriate technologies in the agricultural sector;
(b) to develop:

(i) efficient systems for the generation and transfer of appropriate technologies; and
(ii) technological and institutional capabilities in the public and private sectors, compatible with competitive and sustainable agricultural production.

3. In the pursuit of its functions under this Article, the Community shall encourage the private sector to play a vital role in:

(a) the development, adaptation and transfer of appropriate technologies in the agricultural sector; and
(b) the development of producer associations as a basis for autonomous action and intra-regional transfer of technologies and research findings.

4. The Community shall co-operate with Member States and competent organisations to devise means of protecting, developing and commercialising local knowledge about the value and use of the Region's biodiversity for the benefit of their populations, especially their indigenous peoples.

* * *

5. Decision 406 - Codification of the Andean Subregional Integration Agreement (Cartagena Agreement)*

Article 142

Member Countries shall promote a joint scientific and technological development process to attain the following objectives:

a) The creation of the ability to respond subregionally to the challenges of the scientific-technological revolution in course;
b) The contribution of science and technology to the conception and execution of Andean development strategies and programs; and
c) Taking advantage of the mechanisms of economic integration in order to induce technological innovation and productive modernization.

Article 143

With respect to the previous Article, the Member Countries shall adopt in the fields where there is a common interest:

a) Programs of cooperation and joint efforts in science and technology in which the subregional level is more effective to train human resources and to obtain the results of the investigation;
b) Technological development programs that contribute to the attainment of solutions to the common problems of the productive sectors; and
c) Programs for taking advantage of the enlarged market and of joint physical, human, and financial abilities, in order to induce technological development in sectors of common interest.

* * *

* Decision 406 (1997): <http://www.comunidadandina.org/english/andean/ande_trie1.htm>

6. Decision 291 of the Commission of the Cartagena Agreement: Regime for the Common Treatment of Foreign Capital and on Trademarks, Patents, Licensing Agreements and Royalties*

CHAPTER IV
IMPORTATION OF TECHNOLOGY

Article 12

Technology licensing, technical assistance, technical service, basic and detail engineering and all other technological contracts shall, in accordance with the respective national legislation of the Member Countries, be registered with the competent national agency of the respective Member Country. The latter must evaluate the effective contribution of the imported technology by estimating the probable profits or the price of the goods that incorporate technology, or through other specific methods of quantifying the effect of the imported technology.

Article 13

Contracts for the importation of technology must contain clauses about at least the following matters:

a) Identification of the parties and express indication of their nationality and residence;
b) Identification of the methods used to transfer the imported technology;
c) Contract prices of each of the elements involved in the transfer of technology;
d) Determination of the effective period of the contracts.

Article 14

In order to register transfer of technology, trademark or patent contracts, Member Countries may bear in mind that those contracts not contain the following:

a) Clauses by virtue of which the supply of technology or the use of a trademark bears with it the obligation of the recipient country or enterprise to acquire, from a given source, capital equipment, intermediate products, raw materials or other technologies, or to use on a permanent basis personnel indicated by the enterprise supplying the technology;
b) Clauses by virtue of which the enterprise selling the technology or enterprise granting use of a trademark reserves the right to set sale or resale prices for the products that are manufactured using that technology;
c) Clauses that contain restrictions on the volume and structure of production;
d) Clauses that prohibit use of competing technologies;
e) Clauses that establish a total or partial purchase option in favor of the technology supplier;

* Decision 291 (1991):
International Legal Materials. Volume 30, Number 5, September 1991. The original Spanish version appears in Gaceta Oficial del Acuerdo de Cartagena, Year VIII, No. 80, 4 April 1991 and <http://www.comunidadandina.org/english/Dec/d291e.htm>

f) Clauses that compel the technology buyer to transfer to the supplier all such inventions or improvements as may be obtained though use of that technology;
g) Clauses that require the payment of royalties to the holders of patents or trademarks for patents or trademarks that are not used or have expired; and
h) Other Clauses having an equivalent effect.

Except in special cases that have been duly judged by the competent national agency of the recipient country, clauses prohibiting or limiting in any way the export of the products manufactured using the respective technology, shall not be accepted.

In no case shall clauses of this kind be allowed with respect to Subregional trade or to the export of similar products to third countries.

Article 15

In the degree to which intangible technological contributions do not constitute capital investments, they shall grant the right to receive royalties, in keeping with Member Countries legislation.

The accrued royalties may be capitalized, pursuant to the terms of this Regime, after payment of the taxes due.

When these contributions are supplied to a foreign enterprise by its parent corporation or by another branch of the same parent corporation, the payment of royalties may be authorized in cases judged beforehand by the competent national agency of the recipient country.

* * *

7. Decision 345 – Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties*

Article 1

The purpose of this Decision is:

[…]

(b) to promote research activities in the Andean area;
(c) to promote technology transfer activities within and outside the subregion.

[…]

Article 24

The grant of a breeder's certificate shall confer on the owner thereof the right to prevent third parties from engaging without his consent in the following acts in respect of reproductive, propagating or multiplication material of the protected variety:

(a) production, reproduction, multiplication or propagation;
(b) preparation for the purposes of reproduction, multiplication or propagation;
(c) offering for sale;
(d) sale or any other act that entails placing reproductive, propagating or multiplication material on the market for commercial purposes;
(e) exportation;
(f) importation;
(g) possession for any of the purposes mentioned in the foregoing subparagraphs;
(h) commercial use of ornamental plants or parts of plants as multiplication material for the production of ornamental and fruit plants, or part thereof of cut flowers;
(i) the performance of the acts mentioned in the foregoing subparagraphs in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of reproductive or multiplication material of the protected variety, unless the owner has had reasonable opportunity to exercise his exclusive right in relation to the said reproductive or multiplication material.

[…]

Article 25

The breeder's certificate shall not confer on the owner thereof the right to prevent third parties from using the protected variety where such use is made:

(a) in a private circle, for non-commercial purposes;
(b) for experimental purposes;
(c) for the breeding and exploitation of a new variety, except in the case of a variety essentially derived from a protected variety. The said new variety may be registered in the name of the breeder thereof.

* Decision 345 (1993):
<http://www.comunidadandina.org/english/Dec/d345e.htm>

Article 26

Anyone who stores and sows for his own use, or sells as a raw material or food, the product of his cultivation of the protected variety shall not be thereby infringing the breeder's right. This Article shall not apply to the commercial use of multiplication, reproductive or propagating material, including whole plants and parts of plants of fruit, ornamental and forest species.

Article 27

Breeder's rights may not be invoked against the acts mentioned in the Article 24 of this Decision where the material of the protected variety has been sold or otherwise marketed by the owner of the said right, or with his consent, except where those acts involve:

(a) further reproduction, multiplication or propagation of the protected variety, subject to the limitation specified in Article 30 of this Decision;
(b) exportation of the material of the protected variety, such as would permit reproduction thereof, to a country that does not grant protection to the varieties of the plant species to which the exported variety belongs, except where the said material is for human, animal or industrial consumption purposes.

Article 28

Where necessary, the Member Countries may adopt measures for the regulation or control, on their territory, of the production or marketing, importation or exportation of reproductive or multiplication material of a variety, provided that such measures do not imply disregard for the breeders' rights recognized by this Decision, or hamper the exercise thereof.

* * *

8. North American Free Trade Agreement (NAFTA)*

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolved to:

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

PART TWO: TRADE IN GOODS

Chapter Seven: Agriculture and Sanitary and Phytosanitary Measures

Article 720

Technical Cooperation

1. Each Party shall, upon the request of another Party, facilitate the provision of technical advice, information and assistance, on mutually agreed terms and conditions, to enhance that Party's sanitary and phytosanitary measures and related activities, including research, processing technologies, infrastructure and the establishment of national regulatory bodies. Such assistance may include credits, donations and grants, for the purpose of acquiring technical expertise, training and equipment to allow the Party to adjust to and comply with a Party's sanitary or phytosanitary measure.

2. Each Party shall, on the request of another Party:

(a) provide to that Party information on its technical cooperation programs regarding sanitary or phytosanitary measures relating to specific areas of interest; and
(b) consult with the other Party during the development of, or prior to the adoption or change in the application of, any sanitary or phytosanitary measure.

PART THREE: TECHNICAL BARRIERS TO TRADE

Chapter Nine: Standards-Related Measures

Article 911:

Technical Cooperation

1. Each Party shall, on request of another Party:

(a) provide to that Party technical advice, information and assistance on mutually agreed terms and conditions to enhance that Party's standards-related measures, and related activities, processes and systems;

(b) provide to that Party information on its technical cooperation programs regarding standards-related measures relating to specific areas of interest; and

* NAFTA (1992):
International Legal Materials, Volume 32, Number 2, March 1993; and
<http://www.sice.oas.org/trade/nafta/naftatce.asp>

(c) consult with that Party during the development of, or prior to the adoption or change in the application of, any standards-related measure.

2. Each Party shall encourage standardizing bodies in its territory to cooperate with the standardizing bodies in the territories of the other Parties in their participation, as appropriate, in standardizing activities, such as through membership in international standardizing bodies.

PART FIVE: INVESTMENT, SERVICES AND RELATED MATTERS

Chapter Thirteen: Telecommunications

Article 1309

Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

PART SIX: INTELLECTUAL PROPERTY

Chapter Seventeen: Intellectual Property

Article 1703

National Treatment

1. Each Party shall accord to nationals of another Party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights. In respect of sound recordings, each Party shall provide such treatment to producers and performers of another Party, except that a Party may limit rights of performers of another Party in respect of secondary uses of sound recordings to those rights its nationals are accorded in the territory of such other Party.

2. No Party may, as a condition of according national treatment 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.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of another Party to designate for service of process an address in the Party's territory or to appoint an agent in the Party's territory, if the derogation is consistent with the relevant Convention listed in Article 1701(2), provided that such derogation:

(a) is necessary to secure compliance with measures that are not inconsistent with this Chapter; and

(b) is not applied in a manner that would constitute a disguised restriction on trade.

4. No Party shall have any obligation under this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 1704
Control of Abusive or Anticompetitive Practices or Conditions

Nothing in this Chapter shall prevent a Party from specifying in its domestic law licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. A Party may adopt or maintain, consistent with the other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.

Article 1705
Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:

(a) all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such; and
(b) compilation 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 interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, including the right to authorize or prohibit:

(a) the importation into the Party's territory of copies of the work made without the right holder's authorization;
(b) the first public distribution of the original and each copy of the work by sale, rental or otherwise;
(c) the communication of a work to the public; and
(d) the commercial rental of the original or a copy of a computer program.

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

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

(a) any person acquiring or holding 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.

4. Each Party shall provide that, where the term of protection of a work, other than a photographic work or a work of applied art, is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years from the end of the calendar year of the first authorized publication of the work, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

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

6. No Party may grant translation and reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.

7. Each Party shall comply with the requirements set out in Annex 1705.7.

Article 1709
Patents

1. Subject to paragraphs 2 and 3, 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 application" to be synonymous with the terms "non-obvious" and "useful", respectively.

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

3. A Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
(b) plants and animals other than microorganisms; and
(c) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes for such production.

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

4. If a Party has not made available product patent protection for pharmaceutical or agricultural chemicals commensurate with paragraph 1:

(a) as of January 1, 1992, for subject matter that relates to naturally occurring substances prepared or produced by, or significantly derived from, microbiological processes and intended for food or medicine; and
(b) as of July 1, 1991, for any other subject matter, that Party shall provide to the inventor of any such product or its assignee the means to obtain product patent protection for such product for the unexpired term of the patent for such product granted in another Party, as long as the product has not been marketed in the Party providing protection under this paragraph and the person seeking such protection makes a timely request.

5. Each Party shall provide that:

(a) where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using or selling the subject matter of the patent, without the patent owner's consent; and
(b) where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, or importing at least the product obtained directly by that process, without the patent owner's consent.

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

7. Subject to paragraphs 2 and 3, patents shall be available and patent rights enjoyable without discrimination as to the field of technology, the territory of the Party where the invention was made and whether products are imported or locally produced.

8. A Party may revoke a patent only when:

(a) grounds exist that would have justified a refusal to grant the patent; or
(b) the grant of a compulsory license has not remedied the lack of exploitation of the patent.

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

10. Where the law of a Party allows for use of the subject matter of a patent, other than that use allowed under paragraph 6, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:

(a) authorization of such use shall be considered on its individual merits;

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

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

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the Party's domestic market;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, 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 shall be subject to judicial or other independent review by a distinct higher authority;

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

(k) the Party shall not be obliged to apply the conditions set out in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. he need to correct anticompetitive practices may be taken into account in determining the amount of remuneration in such cases. ompetent 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 anticompetitive practices.

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

(a) the product obtained by the patented process is new; or
(b) a substantial likelihood exists that the allegedly infringing product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In the gathering and evaluation of evidence, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.

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

Article 1710
Layout Designs of Semiconductor Integrated Circuits

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

2. Subject to paragraph 3, each Party shall make it unlawful for any person without the right holder's authorization to import, sell or otherwise distribute for commercial purposes any of the following:

(a) a protected layout design;
(b) an integrated circuit in which a protected layout design is incorporated; or
(c) an Article incorporating such an integrated circuit, only insofar as it continues to contain an unlawfully reproduced layout design.

3. No Party may make unlawful any of the acts referred to in paragraph 2 performed in respect of an integrated circuit that incorporates an unlawfully reproduced layout design or any Article that incorporates such an integrated circuit where the person performing those acts or ordering those acts to be done did not know and had no reasonable ground to know, when it acquired the integrated circuit or Article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.

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

5. No Party may permit the compulsory licensing of layout designs of integrated circuits.

6. Any Party that requires registration as a condition for protection of a layout design shall provide that the term of protection shall not end before the expiration of a period of 10 years counted from the date of:

(a) filing of the application for registration; or
(b) the first commercial exploitation of the layout design, wherever in the world it occurs.

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

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

9. This Article shall apply, except as provided in Annex 1710.9.

Article 1711
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. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.

3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.

4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses, or conditions that dilute the value of the trade secrets.

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

6. Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

7. 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 1719
Cooperation and Technical Assistance

1. The Parties shall provide each other on mutually agreed terms with technical assistance and shall promote cooperation between their competent authorities. Such cooperation shall include, but not be limited to, the training of personnel.

2. The Parties shall cooperate with a view to eliminating trade in goods that infringe intellectual property rights. For this purpose, each Party shall establish and notify the other Parties of contact points in its federal government and shall exchange information concerning trade in infringing goods.

Article 1720
Protection of Existing Subject Matter

1. Other than the provisions of Article 1705(7), this Agreement does not give rise to obligations in respect of acts that occurred before the date of application of the relevant provisions of this Agreement for the Party in question.

2. Except as otherwise provided for in this Agreement, each Party shall apply this Agreement to all subject matter existing on the date of application of the relevant provisions of this Agreement for the Party in question, and which is protected in a Party on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Chapter. In respect of this paragraph and paragraphs 3 and 4, a Party's obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention and with respect to the rights of producers of sound recordings in existing sound recordings shall be determined solely under Article 18 of that Convention, as made applicable under this Agreement.

3. Except as required under Article 1705(7), and notwithstanding paragraph 2, a Party shall not be required to restore protection to subject matter that, on the date of application of the relevant provisions of this Agreement for the Party in question, has fallen into the public domain in its territory.

4. Any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced or in respect of which a significant investment was made, before the date of ratification of this Agreement by that Party, any Party may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of the Agreement for that Party. In such cases, the Party shall, however, at least provide for payment of equitable remuneration.

5. No Party shall be obliged to apply the provisions of Article 1705(2)(d) or Article 1706(1)(d) with respect to originals or copies purchased prior to the date of application of the relevant provisions of this Agreement for that Party.

6. No Party shall be required to apply Article 1709(10), or the requirement in Article 1709(7) that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the text of the Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection that are pending on the date of application of the relevant provisions of this Agreement for the Party in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

* * *

9. Plan of Action for the Sustainable Development of the Americas - Summit of the Americas on Sustainable Development, Santa Cruz de la Sierra, Bolivia, December 7-8, 1996*

III.3 Science and Technology Transfer

12. Based on the evaluation conducted within the framework of the special session of the United Nations General Assembly on progress in fulfilling the commitments undertaken at the United Nations Conference on Environment and Development with regard to technology transfer and, in accordance with paragraph 7 of the Declaration of Santa Cruz de la Sierra, entrust the OAS, for the purpose of implementing this Plan of Action, with evaluating compliance with the commitments established in paragraph 7 related to scientific and technological knowledge, identifying the needs of the countries and existing obstacles, and proposing ways of overcoming them, including the development of institutional capacity. The relevant proposals should be channeled for consideration through the follow-up mechanisms described in paragraph III.1.

13. Request UNDP to formulate a project supporting the establishment of a hemispheric network of sustainable development information systems (SDIS), as indicated in Agenda 21 and as one of the responsibilities assigned to the Sustainable Development Network Programme (SDNP). The network's objective will be to disseminate among the countries of the Hemisphere the information they require on economic, social, environmental, legal, institutional, scientific, and technological matters at the national, subregional, regional, and hemispheric levels.

14. Support the initiatives contained in the Plan of Action of the Hemispheric Meeting of Ministers of Science and Technology, held in Cartagena in 1996, especially those which lead to the development of scientific and technological capacity in the countries of the Hemisphere, to develop scientific and technological cooperation in support of the relatively less developed countries, and to strengthen multilateral initiatives taken in the region, such as by the IDB and the OAS and, in particular, through the Common Market of Scientific and Technological Knowledge (MERCOCYT) and others.

* * *

* Plan of Action for the Sustainable Development (1996):
Summit of the Americas on Sustainable Development Santa Cruz de la Sierra, Bolivia, December 7-8, 1996: <http://www.summit-americas.org/boliviaplan.htm>

10. Charter on a Regime of Multinational Industrial Enterprises (MIEs) in the Preferential Trade Area for Eastern and Southern African States*

[…]

2. Mindful that the furtherance of regional programmes in industrial development requires a common framework for the pooling of factors of production within the Preferential Trade Area;

3. Convinced that Multinational Industrial Enterprises can play an important role in self-sustained industrialization within the Preferential Trade Area, and that such industrialization will lead to the expansion of trade in industrial products and related services; and thereby accelerate the social and economic development of the Member States;

6. Recognizing the need to create the means by which the movement of investment capital between Member States, and particularly from the more developed to the less developed Member States, may be expeditiously effected in the interests of development throughout the region;

Article 17
Obligations of MIEs and Subsidiaries

1. The obligations of each MIE and each Subsidiary, all of which shall be stated in the Performance Agreement, are the following:

(d) to refrain from entering into restrictive business practices that have an adverse effect on:

(i) the acquisition and transfer of technology; and
(ii) the competitiveness of other enterprises owned by nationals of Member States.

2. In addition to the obligations stated in paragraph 1 of this Article, the Performance Agreement may contain other obligations for the MIE or Subsidiary which are considered appropriate by the parties to the Agreement.

* * *

* MIE Charter (1990):
Preferential Trade Area for Eastern and Southern African States (1994)*: Report of the Sixteenth Meeting of the Council of Ministers*, 17-19 November 1990., Mbabane, Swaziland (PTA/CM/XVI/2); and *International Legal Materials*, Volume 30, Number 3, May 1991.

11. Treaty Establishing the African Economic Community*

REAFFIRMING the Treaty establishing the Economic Community of West African States signed in Lagos on 28 May, 1975 and considering its achievements:

CONVINCED that the integration of the Member States into a viable regional Community may demand the partial and gradual pooling of national sovereignties to the Community within the context of a collective political will;

Article 3
Aims and Objectives

1. The aims of the Community are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African Continent.

2. In order to achieve the aims set out in the paragraph above, and in accordance with the relevant provisions of this Treaty, the Community shall, by stages, ensure;

a) the harmonisation and co-ordination of national policies and the promotion of integration programmes, projects and activities, particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade, money and finance, taxation, economic reform policies, human resources, education, information, culture, science, technology, services, health, tourism, legal matters;

Article 26
Industry

3. In order to create a solid basic for industrialisation and promote collective self reliance, Member States shall:

(a) ensure, on the one hand, the development of industries essential for collective self- reliance and, on the other, the modernisation of priority sectors of the economy especially:

(xi) bio-technology industries;

* African Economic Community (1991):
International Legal Materials, Volume 30, Number 5, September 1991.

Article 27
Science and Technology

1. Member States shall:

a) strengthen their national scientific and technological capabilities in order to bring about the socio economic transformation required to improve the quality of life of their population;
b) ensure the proper application of science and technology to the development of agriculture, transport and communications, industry, health and hygiene, energy, education and manpower and the conservation of the environment;
c) reduce their dependence on foreign technology and promote their individual and collective technological self-reliance;
d) co-operate in the development, acquisition and dissemination of appropriate technologies; and
e) strengthen existing scientific research institutions and take all necessary measures to prepare and implement joint scientific research and technological development programmes.

2. In their co-operation in this field, Member States shall:

(a) harmonise, at the Community level, their national policies on scientific and technological research with a view to facilitating their integration into the national economic and social development plans;
(b) co-ordinate their programmes in applied research, research for development, scientific and technological services;
(c) harmonise their national technological development plans by placing special emphasis on indigenous and adapted technologies as well as their regulations on industrial property and transfer of technology;
(d) co-ordinate their positions on all scientific and technical questions forming the subject of international negotiations;
(e) carry out a permanent exchange of information and documentation and establish Community data networks and data banks;
(f) develop joint programmes for training scientific and technological cadres, including the training and further training of skilled manpower;
(g) promote exchanges of researchers and specialists among Member States in order to make full use of the technical skills available within the Community; and
(h) harmonise the educational systems in order to adapt better educational scientific and technical training to the specific development needs ofthe West African environment.

* * *

12. Organization of African Unity: Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa*

PREAMBLE

14. *Recognizing* the need to promote the development of clean production methods, including clean technologies, for the sound management of hazardous wastes produced in Africa, in particular, to avoid, minimize and eliminate the generation of such wastes,

Article 4
General Obligations

3. Waste Generation in Africa

Each Party Shall:

(h) The issue of preventing the transfer to Africa of polluting technologies shall be kept under systematic review by the Secretariat of the Conference and periodic reports shall be made to the Conference of the Parties;

Article 10
Intra-African Co-operation

1. The Parties to this Convention shall co-operate with one another and with relevant African organizations, to improve and achieve the environmentally sound management of hazardous wastes.

2. To this end, the Parties shall:

(c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound clean production technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new and improved technologies;

(d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;

* Bamako Convention (1991):
International Legal Materials, Volume 30, Number 3, May 1991.

Article 16
Secretariat

(g) To receive and convey information from and to Parties on:

- sources of technical assistance and training;
- available technical and scientific know-how;
- sources of advice and expertise; and
- availability of resources;

With a view to assisting them in such areas as:

- the handling of the notification system of this Convention;
- the management of hazardous wastes;
- environmentally sound clean production methods relating to hazardous wastes, such as clean production technologies;

* * *

13. Treaty of the Southern African Development Community*

1. The objectives of SADC shall be to:

a) achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa and support the socially disadvantaged through regional integration;

[…]

2. In order to achieve the objectives set out in paragraph 1 of this Article, SADC shall:

[…]

f) promote the development, transfer and mastery of technology;

CHAPTER SEVEN
COOPERATION

Article 21
Areas of cooperation

3. In accordance with the provisions of this Treaty, Member States agree to cooperate in the areas of:

d) human resources development, science and technology;

* * *

* Southern African Development Community (1993):
International Legal Materials, Volume 32, Number 1, January 1993.

14. Treaty of Economic Community of West African States(ECOWAS)*

CHAPTER V CO-OPERATION IN INDUSTRY, SCIENCE AND TECHNOLOGY AND ENERGY

Article 26
Industry

1. For the purpose of promoting industrial development of Member States and integrating their economies, Member States shall, harmonise their industrialisation policies.

2. In this connection, Member States shall:

[…]

i) promote technical co-operation and the exchange of experience in the field of industrial technology and implement technical training programmes among Member States;

Article 27
Science and Technology

1. Member States shall:

a) strengthen their national scientific and technological capabilities in order to bring about the socioeconomic transformation required to improve the quality of life of their population;

b) ensure the proper application of science and technology to the development of agriculture, transport and communications, industry, health and hygiene, energy, education and manpower and the conservation of the environment;

c) reduce their dependence on foreign technology and promote their individual and collective technological self-reliance;

d) co-operate in the development, acquisition and dissemination of appropriate technologies; and

e) strengthen existing scientific research institutions and take all necessary measures to prepare and implement joint scientific research and technological development programmes.

2. In their co-operation in this field, Member States shall:

* ECOWAS Treaty (1993):
Economic Community of West African States (ECOWAS) (1993). 'Revised Treaty of the Economic Community of West African States', *Economic Community of West African States (ECOWAS)* – Revised Treaty (Abuja, Nigeria: ECOWAS Executive Secretariat); also available in *International Legal Materials*, Volume 35, Number 3, May 1996; and <http://www.ecowas.int/>

a) harmonise, at the Community level, their national policies on scientific and technological research with a view to facilitating their integration into the national economic and social development plans;

b) co-ordinate their programmes in applied research, research for development, scientific and technological services;

c) harmonise their national technological development plans by placing special emphasis on indigenous and adapted technologies

as well as their regulations on industrial property and transfer of technology;

d) co-ordinate their positions on all scientific and technical questions forming the subject of international negotiations;

e) carry out a permanent exchange of information and documentation and establish Community data networks and data banks;

f) develop joint programmes for training scientific and technological cadres, including the training and further training of skilled manpower;

g) promote exchanges of researchers and specialists among Member States in order to make full use of the technical skills available within the Community; and

h) harmonise the educational systems in order to adapt better educational scientific and technical training to the specific development needs of the West African environment.

* * *

15. Treaty establishing the Common Market for Eastern and Southern Africa (COMESA)*

CHAPTER TWELVE

CO-OPERATION IN INDUSTRIAL DEVELOPMENT

Article 99
Scope of Co-operation in Industrial Development

The objectives of co-operation in industrial development in the Common Market are to:

(a) promote self-sustained and balanced growth;
(b) increase the availability of industrial goods and services for intra-Common Market trade;
(c) improve the competitiveness of the industrial sector thereby enhancing the expansion of intra-regional trade in manufactures in order to achieve structural transformation of the economy that would foster the overall socio-economic development in Member States; and
(d) develop industrialists that would acquire ownership and management of the industries.

Article 100
Strategy and Priority Areas

For the purposes of Article 99 of this Treaty, the Member States undertake to formulate an industrial strategy aimed at:

(a) the promotion of linkages among industries through specilisation and complementarity, paying due regard to comparative advantage in order to enhance the spread effects of industrial growth and to facilitate the transfer of technology;
(b) the facilitation of the development of:
    (i) small-and-medium scale industries including sub-contracting and other relations between larger and smaller firms;
    (ii) basic capital and intermediate goods industries for the purposes of obtaining the advantages of economies of scale;
    (iii) food and agro industries;
(c) the rational and full use of established industries so as to promote efficiency in production;
(d) the promotion of industrial research and development, the transfer, adaptation and development of technology, training, management and consultancy services

* COMESA Treaty (1994):
International Legal Materials, Volume 33, Number 5, September 1994; and
<http://www.comesa.int/backgrnd/BACKTRTY.HTM>

through the establishment of joint industrial support institutions and other infrastructural facilities;

(e) the promotion of the linkage between the industrial sector and other sectors of the economies such as agriculture, transport, communications and other sectors;

(f) the granting of investment incentives to industries particularly those that use local materials and labour;

(g) the dissemination and exchange of industrial and technological information;

(h) the improvement in the investment climate for both national and foreign investors and the encouragement of national savings and the re-investment of surpluses;

(i) the development of human resources including training and the development of indigenous entrepreneurs and industrialists for sustained industrial growth;

[…]

(k) the rehabilitation, maintenance and upgrading of agro-industries and the metallurgical, engineering, chemical and building materials industries;

(l) the development and promotion of integrated inter-State resource-based core and basic industries;

(m) the promotion of multinational projects with the aim of increasing added value to raw materials in the Member States for export; and

Article 101
Multinational Industrial Enterprises

2. The Member States concerned shall determine:

(a) the conditions and priorities that shall govern multinational industrial enterprises that:

(i) require the combined markets of more than one Member State to be profitable and which require for their consumption large quantities of the natural resources or raw materials of the Member States which are either exported to third countries or are unused;

[…]

(iii) lead to the earning or saving of substantial amounts of foreign exchange;

(iv) through their activities, enhance the development or acquisition of modern technology, managerial and marketing experience; and

[…]

Article 102
Industrial Manpower Development, Training, Management and Consultancy Services

1. The Member States shall take appropriate measures to establish, where necessary, joint training institutions and programmes, to share available national institutions and use African training institutions to meet the requirements for the training of skilled manpower for their industrial and technological development.

2. The Member States shall diligently endeavour to develop and make maximum use of their national entrepreneurs and technical managerial and marketing manpower and other human resources to promote and accelerate the process of their industrialization.

[…]

Article 103
Industrial Research and Development and the Acquisition of Modern Technology

1. The Member States shall share and make the best use of existing and future industrial and scientific research institutions, facilities and technical know-how. The institutions referred to herein include the Leather and Leather Products Institute and the Metallurgical Technology Centre.

2. The Member States shall endeavour to adopt a common approach to and determine the terms and conditions governing the transfer or adaptation and development of technology.

3. The Member States shall endeavour to co-ordinate their efforts and consult each other in matters relating to industrial property.

Article 104
Exchange of Industrial and Technological Information

1. The Member States shall exchange information on:

(a) the production of and requirements for capital, intermediate and consumer goods;
(b) the availability of facilities for industrial manpower development and training;
(c) legislation and regulations concerning investment from third countries and related incentives;
(d) legislation on patents, trade marks and designs; and
(e) industrial investment opportunities, processes, technology and related information.

2. The Member States undertake to communicate to each other and exchange any information acquired as a result of industrial research, engineering and technological adaptation or innovation and managerial and marketing experience.

3. The Member States shall disseminate and exchange any other information or documents deemed necessary by the Sectoral Ministerial Meeting on Industry.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this Article, a Member State may withhold classified documents.

5. The Member States undertake to strengthen their capability to compile, disseminate and absorb industrial information.

6. The Member States agree that the provisions of this Article shall not apply where the communication of the information in question is prohibited under an agreement concluded before the entry into force of this Treaty, between a Member State and another party.

CHAPTER SEVENTEEN
CO-OPERATION IN THE DEVELOPMENT OF SCIENCE AND TECHNOLOGY

Article 127
Scope of Co-operation

Recognising the fundamental importance of science in socio-economic and cultural development and technological progress, the Member States agree to:

(a) build up basic scientific and technological research capabilities in their universities and technology centres by appropriate training of scientists, engineers, technologists so as to assure a critical mass while maintaining regional and international contact;
(b) build up at the same time expertise in conventional low and indigenous technologies emphasizing craftsmanship and fabrication techniques;
(c) effect appropriate reforms in primary, secondary and tertiary education in respect of science and technology;
(d) develop a comprehensive plan for the development of applied sciences related to agriculture, health, industry, energy, local materials and minerals, the environment, soil science, oceans, transport and communications;
(e) enhance the training of personnel for research and development in the areas of conventional technology and science-based high technology as the quickest way to produce wealth;
(f) allocate adequate resources on science and technology to the minimum of one per cent of GNP as recommended in the Lagos Plan of Action;
(g) liaise with the IAEA, UNESCO and UNIDO in basic science and the CGIAR Network and other recognised regional institutions for applied science and technology including training facilities; and
(h) ensure that research and development is closely inter-linked with production units to secure their integration with national development planning.

Article 128
Promotion of Science and Technology

In order to promote co-operation in science and technology development, the Member States agree to:

(a) jointly establish and support scientific and technological research and development institutions in the various disciplines including the strengthening of existing institutions;
(b) create a conducive environment for the promotion of science and technology, socio-economic development and growth through the removal of impediments to pro-competitive collaboration in generic research and the swift transfer of technology and technical information from the government to the private sector;
(c) facilitate the access of the indigenous scientists, engineers and technologists to international literature and publications on science and technology and promote theircontacts with the international fraternity in the various relevant disciplines;

(d) promote the exchange of expertise and research results and technical information sharing within the Common Market on science and technology and develop appropriate links and exchange programmes;
(e) jointly develop and implement suitable patent laws and industrial licensing systems for the protection of industrial property rights and encourage the effective use of technological information contained in patents;
(f) encourage the use of indigenous science and technologies where appropriate and provide incentives for the development of indigenous science and technologies;
(g) individually and collectively mobilise technical and financial support from the local and international organisations or agencies for the development of science and technology in the Common Market;
(h) collaborate in the training of personnel in the various scientific and technological disciplines at all levels using existing institutions where feasible;
(i) establish national centres for the commercialisation of research results and take appropriate political action to develop scientific enterprise through self reliance and adequate allocation of resources;
(j) encourage collaboration in the establishment of innovative firms in biotechnology and energy generation including nuclear plants and in the production of scientific equipment; and
(k) to set up regional internship and technical assistance programmes to promote the free movement of scientists, engineers and technologists within the Common Market.

CHAPTER EIGHTEEN

CO-OPERATION IN AGRICULTURE AND RURAL DEVELOPMENT

Article 130

Co-operation in Agricultural Development

The Member States undertake to co-operate in specific fields of agriculture, including:

[…]

(b) research, extension and the exchange of technical information and experience;

Article 134

Co-operation in Agricultural Research and Extension

The Member States shall:

(a) give priority to research on foodcrops;
(b) strengthen and effectively utilise existing national agricultural research and extension institutions on a network basis for the benefit of the Common Market;
(c) exchange pertinent research findings and research and extension expertise for the benefit of the farming community within the Common Market;
(d) strengthen extension services in order to establish effective liaison mechanisms between research systems and farmers; and
(e) establish data banks and journals for the dissemination of research and extension information within the Common Market.

Article 135
Co-operation in Drought and Desertification Management

The Member States shall:

(a) agree on appropriate policies on the utilisation of fragile lands in order to prevent land degradation;
(b) institute appropriate measures to contain the effects of droughts by developing irrigation programmes, improved techniques in dryland farming and the use of drought-tolerant crops; and
(c) co-operate in the exchange of information and expertise regarding drought and desertification managements.

CHAPTER TWENTY SIX
INVESTMENT PROMOTION AND PROTECTION

Article 158
Scope of Co-operation in Investment Promotion and Protection

The Member States recognise the need for effective resource mobilisation, investment and the importance of encouraging increased flow of private sector investment into the Common Market for development. To this end, the Member States agree to adopt harmonised macro-economic policies that shall attract private sector investment into the Common Market.

Article 160
Information on Investment Incentives and Opportunities

The Member States undertake to increase awareness of their investment incentives, opportunities, legislation, practices, major events affecting investments and other relevant information through regular dissemination and other awareness - promoting activities.

Article 162
Multilateral Investment Agreements

The Member States agree to take necessary measures to accede to multilateral agreements on investment dispute resolution and guarantee arrangements as a means of creating a conducive climate for investment promotion. To this end, the Member States undertake to accede to:

(a) the International Convention on Settlement of Investment Disputes Between States and Nationals of Other States, 1965;
(b) the Convention Establishing the Multilateral Investment Guarantee Agency; and
(c) any other multilateral agreements designed to promote or protect investment.

* * *

16. Agreement on ASEAN Energy Cooperation*

Article I
General Provisions

1. The ASEAN Member Countries Hereby agree to cooperate in the efficient development and use of all forms of energy, whether commercial, non- commercial, renewable or non-renewable, in modalities that may be appropriately designed by them for the above purpose.

2. The range of cooperation will span planning, development, manpower training, information ex- change, efficiency and conservation, supply and disposal, where appropriate, in any of the following energy sub-activities:

(ii) technological re-search, development and demonstration;
(iii) transfer of technology ;
(ix) exchange of technical information on personnel, technology transfer, operational experience, research publications, as well as programme policy and implementation experiences;

Article 7
Cooperation in Exchange of Information

1. Recognizing that energy date and information are the basic means for monitoring the effect of energy policies for formulating plans and programmes;

2. The Member Countries shall endeavour to cooperate in information exchange with the following objectives:
[…]

h. to benefit from transfer of technology and operational experiences encountered during programme implementation or studies;

* * *

* ASEAN Energy Co-operation (1986):
<http://www.aseansec.org/economic/agrmec86.htm>

17. Protocol Amending the Agreement on ASEAN Energy Cooperation*

Article 1
General Provisions

2. The range of cooperation will span planning development manpower training, information exchange, and encouraging private sector participation, where appropriate, in any of the following energy areas:

(iii) technological research, development and demonstration;
(iv) transfer of technology;

* * *

* Protocol Amending the Agreement on ASEAN Energy Co-operation (1995): <http://www.aseansec.org/politics/pol_agr6.htm>

18. Framework Agreements on Enhancing ASEAN Economic Cooperation*

[…]

Noting the significant unilateral efforts made by Member States in recent years to liberalise trade and promote investments, and the importance of extending such policies to further open up their economies, given the comparative advantages and complementarity of their economies;

Recognizing that Member States, having different economic interests, could benefit from subregional arrangements;

Conscious of the rapid and pervasive changes in the international political and economic landscape, as well as both challenges and opportunities yielded thereof, which need more cohesive and effective performance of intra-ASEAN economic cooperation;

Mindful of the need to extend the spirit of friendship and cooperation among Member States to other regional economies, as well as those outside the region which contribute to the overall economic development of Member States;

Recognizing further the importance' of enhancing other fields of economic cooperation such as in science and technology, agriculture, financial services and tourism;

Article 2
Areas of Cooperation
[…]

B. Cooperation in Industry, Minerals and Energy

1. Member States agree to increase investment industrial linkages and complementarity by adoption new and innovative measures, as well as strengthening existing arrangements in ASEAN.

2. Member States shall provide flexibility for new forms of industrial cooperation. ASEAN shall strengthen cooperation in the development of the minerals sector.

3. Member States shall enhance cooperation in the field of energy, including energy planning, exchange of information, transfer of technology, research an development, manpower training, conservation an efficiency, and the exploration, production and supply of energy resources.
[…]

D. Cooperation in Food, Agriculture and Forestry

1. Member States agree to strengthen region cooperation in the areas of development, production and promotion of agricultural products for ensuring for security and upgrading information exchanges in ASEAN.

* Framework on ASEAN Economic Co-operation (1992):
International Legal Materials, Volume 31, Number 3, May 1992; and
<http://www.aseansec.org/economic/afta/afta_ag1.htm>

2. Member States agree to enhance technical joint cooperation to better manage, conserve, develop and market forest resources.

Article 3
Other areas of Cooperation

1. Member States agree to increase cooperation in research and development, technology transfer tourism promotion, human resource development an other economic - related areas. Full account shall also be taken of existing ASEAN arrangements in these.

2. Member States, through the appropriate ASEAN bodies, shall regularly consult and exchange views on regional and international developments and trends,

* * *

19. Memorandum of Understanding on ASEAN Cooperation and Joint Approaches in Agriculture and Forest Products Promotion Scheme*

Considering that agriculture and forestry will remain as important aspects of the ASEAN economy with particular significant impact on income enhancement and poverty alleviation and that human resources can be developed through the transfer of technology, a result of the implementation of bold investment programmes;
[…]

Have agreed to sign a Memorandum of Understanding with the following provisions:

IV. Enhancement of Competitiveness of ASEAN Products

15. Member Countries shall endeavour to undertake strategic actions towards enhancing the long term competitive posture of ASEAN agriculture and forest products through the following efforts:

(i) strengthening cooperation in human resources development;
(ii) enhancing complementarity of ASEAN products;
(iii) intensifying cooperation in technology development and transfer; and
(iv) accelerating the harmonisation of standards.

* * *

* ASEAN Co-operation and Joint Approaches in Agriculture and Forest Products Promotion Scheme (1994): <http://www.aseansec.org/economic/muamaf94.htm>

20. ASEAN Framework Agreement on Intellectual Property Cooperation*

Recognising the important role of intellectual property rights in the conduct of trade and the flow of investment among the Member States of ASEAN and the importance of cooperation in intellectual property in the region;

Desiring to foster closer cooperation in the field of intellectual property and related fields in order to provide a firm basis for economic progress, the expeditious realization of the ASEAN Free Trade Area and prosperity among the Member States of ASEAN;
[…]

Article 1
Objectives

1. Member States shall strengthen their cooperation in the field of intellectual property through an open and outward looking attitude with a view to contributing to the promotion and growth of regional and global trade liberalisation.

2. Member States shall promote cooperation in the field of intellectual property among government agencies as well as among the private sectors and professional bodies of ASEAN.

3. Member States shall explore appropriate intra-ASEAN cooperation arrangements in the field of intellectual property, contributing to the enhancement of ASEAN solidarity as well as to the promotion of technological innovation and the transfer and dissemination of technology.

4. Member States shall explore the possibility of setting up of an ASEAN patent system, including an ASEAN Patent Office, if feasible, to promote the region-wide protection of patent bearing in mind developments on regional and international protection of patent.

5. Member States shall explore the possibility of setting up of an ASEAN trademark system, including an ASEAN Trademark Office, if feasible, to promote the region-wide protection of trademark bearing in mind developments on regional and international protection of trademarks.

6. Member States shall have consultations on the development of their intellectual property regimes with a view to creating ASEAN standards and practices which are consistent with international standards.

Article 2
Principles

1. Member States shall abide by the principle of mutual benefits in the implementation of measures or initiatives aimed at enhancing ASEAN intellectual property cooperation.

* ASEAN Intellectual Property Co-operation (1995): <http://www.aseansec.org/economic/agr_ipr.htm>

2. Member States, being mindful of the international conventions on intellectual property rights to which they are parties, and the international obligations assumed under the provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights, shall implement intra-ASEAN intellectual property arrangements in a manner in line with the objectives, principles, and norms set out in such relevant conventions and the Agreement on TRIPS.

3. Member States shall strive to implement intra-ASEAN intellectual property cooperation arrangements which are beneficial to creators, producers and users of intellectual property and in a manner conducive to social and economic welfare.

4. Member States shall recognise and respect the protection and enforcement of intellectual property rights in each Member State and the adoption of measures necessary for the protection of public health and nutrition and the promotion of the public interests in sectors of vital importance to the Member State's socio economic and technological development, which are consistent with their international obligations.

5. Member States are conscious of and understand the necessity for each Member State to adopt appropriate measures to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain-trade or adversely affect the international transfer of technology.

Article 3
Scope of Cooperation

1. Cooperation shall include, inter alia, the fields of copyright and related rights, patents, trademarks, industrial designs, geographical indications, undisclosed information and lay-out designs of integrated circuits.

2. Cooperative activities under this Agreement shall aim, among others, to strengthen ASEAN intellectual property administration; to enhance ASEAN cooperation in intellectual property enforcement and protection; and to explore the possibility of setting up the ASEAN patent and trademark systems.

3. Cooperative activities under this Agreement shall include, inter alia;

3.1 Activities to enhance intellectual property enforcement and protection:

a. Effective protection and enforcement of intellectual property rights;
b. Cross border measures cooperation;
c. Networking of judicial authorities and intellectual property enforcement agencies

3.2 Activities to strengthen ASEAN intellectual property administration such as:

a. automation to improve the administration of intellectual property; and
b. the creation of an ASEAN database on intellectual property registration.

3.3 Activities to strengthen intellectual property legislation such as:

a. comparative study of the procedures, practices and administration of ASEAN intellectual property offices; and
b. activities related to the implementation of the TRIPS Agreement and other recognised international intellectual property conventions.

3.4 Activities to promote human resources development such as:

a. Networking of intellectual property training facilities or centres of excellence on intellectual property and to explore the possibility of establishing a regional training institute for intellectual property or other appropriate structures; and
b. Exchange of intellectual property personnel and experts.

3.5 Activities to promote public awareness of intellectual property rights.

3.6 Activities to promote private sector cooperation in intellectual property such as to explore the possibility of :

a. The establishment of an ASEAN Intellectual Property Association; and
b. Providing arbitration services or other alternative disputere solution mechanisms for the resolution of intellectual property disputes.

3.7 Information exchange on intellectual property issues.

3.8 Other cooperative activities as determined by Member States.

4. Details and the modalities to implement the cooperative activities are to be formulated in the form of a program of action on intellectual property under this framework Agreement.

* * *

21. Ministerial Understanding on ASEAN Cooperation in Transporation*

DO HEREBY AGREE THAT:

2. Member States shall strengthen and enhance existing cooperation efforts in the transport sector and formulate action programmes in areas that are not covered by existing cooperation agreements, through, *inter alia*;

(c) exchange of information;
(d) transfer of technology;

* * *

* ASEAN Co-operation in Transportation (1996): <http://www.aseansec.org/economic/mouact96.htm>

22. Framework Agreement on the ASEAN Investment Area*

Recalling the decision of the Fifth ASEAN Summit held on 15 December 1995 to establish an ASEAN Investment Area (hereinafter referred to as "AIA"), in order to enhance ASEAN's attractiveness and competitiveness for promoting direct investments;
[…]

Recognising that direct investment is an important source of finance for sustaining the pace of economic, industrial, infrastructure and technology development; hence, the need to attract higher and sustainable level of direct investment flows in ASEAN;

Determined to realise the vision of ASEAN to establish a competitive ASEAN Investment Area through a more liberal and transparent investment environment by 1st January 2010; and
[…]

Article 4
Features

The AIA shall be an area where:
[…]

(e) there is freer flow of capital, skilled labour and professionals, and technology amongst Member States.

* * *

* Framework Agreement on the ASEAN Investment Area (1998):
Association of Southeast Asian Nations (1998). "Framework Agreement on the ASEAN Investment Area", *Handbook of Investment Agreements in ASEAN* (Jakarta: ASEAN Secretariat), pp.51-65; and <http://www.aseansec.org/economic/aem/30/frm_aia.htm>

23. The Hanoi Plan of Action*

In order to implement the long-term vision, action plans are being drawn up to realise this Vision. The Hanoi Plan of Action (HPA) is the first in a series of plans of action building up to the realisation of the goals of the Vision.

The HPA has a six-year timeframe covering the period from 1999 to 2004. The progress of its implementation shall be reviewed every three years to coincide with the ASEAN Summit Meetings.

In recognition of the need to address the current economic situation in the region, ASEAN shall implement initiatives to hasten economic recovery and address the social impact of the global economic and financial crisis. These measures reaffirm ASEAN commitments to closer regional integration and are directed at consolidating and strengthening the economic fundamentals of the Member Countries.

II. Enhance Greater Economic Integration

2.2 Implement the Framework Agreement on ASEAN Investment Area (AIA).

k. Identify areas for technical cooperation in human resource development, R&D, infrastructure development, SME and supporting industry development, information and industrial technology development.

2.4 Enhance food security and global competitiveness of ASEAN's food, agriculture and forestry products ASEAN would strive to provide adequate levels of food supply and food accessibility within ASEAN during instances of food shortages to ensure food security and at the same time, enhance the competitiveness of its food, agriculture and forestry sectors through developing appropriate technologies to increase productivity and by promoting intra- and extra–ASEAN trade and greater private sector investment in the food, agriculture and forestry sector.

2.4.2 Develop and Adopt Existing and New Technologies.

a. Conduct collaborative research to develop new/improved technologies in food, agriculture and forestry production, post-harvest and processing activities and sharing of research results and available technology;
b. Conduct R&D in critical areas to reduce the cost of inputs for food, agriculture and forestry production; and
c. Strengthen programmes in food, agriculture and agro-forestry technology transfer, training and extension to increase productivity.

2.5. Intensify industrial cooperation.

[…]

f. Establish R&D/ Skill Development Centres.

2.6. Foster small and medium enterprises (SMEs).

* The Hanoi Plan of Action (1998): http://www.aseansec.oas.org/summit/6th/prg_hpoa.htm

Recognising that small and medium scale enterprises constitute the majority of industrial enterprises in ASEAN and that they play a significant role in the overall economic development of Member States, ASEAN needs to cooperate in order to develop a modern, dynamic, competitive and efficient SME sector. The SME cooperation will address priority areas of human resource development, information dissemination, access to technology and technology sharing, finance and market. The SME cooperation will also ensure the development and implementation of non-discriminatory market-oriented policies in ASEAN that will provide a more favourable environment for SME development.

[…]

d. Explore the possibility of establishing a trade or industrial cooperation scheme to promote intra-ASEAN cooperation for SMEs.

2.6.2 Cooperation

[…]

f. Undertake selected sectoral regional study on the potential areas of finance, market, production technology and management for possible trade and industrial cooperation between/among SMEs in the region;

[…]

l. Organise biennial ASEAN technology exposition;

m. Organise regular joint training programmes, seminars and workshops for SMEs;

n. Compile and publish a directory of resource persons in ASEAN in the area of production technology and management;

o. Develop programmes on entrepreneurship development and innovation in all Member States; and

p. Assist new members of ASEAN on SME development through specialised training programmes and technical assistance

2.7 Further intellectual property cooperation.

To ensure adequate and effective protection, including legislation, administration and enforcement, of intellectual property rights in the region based on the principles of Most Favoured Nation (MFN) treatment, national treatment and transparency as set out in the TRIPS Agreement.

2.7.1 Protection

(a) Strengthen civil and administrative procedures and remedies against infringement of intellectual property rights and relevant legislation; and

(b) Provide and expand technical cooperation in relation to areas such as patent search and examination, computerisation and human resource development for the implementation of the TRIPS Agreement;

2.7.2 Facilitation

(a) Deepen Intellectual Property policy exchange among ASEAN Member States;

(b) Survey the current status of intellectual property rights protection in each ASEAN Member State with a view to studying measures, including development principles, for the effective enforcement of intellectual property rights;

(c) Develop a contact point list of public and business/private sector experts on intellectual property rights and a list of law enforcement officers, the latter list for the purpose of establishing a network to prevent cross-border flow of counterfeits;
(d) Exchange information on well-known marks as a first step in examining the possibility of establishing a region-wide trademark system;
(e) Exchange information on current intellectual property rights administrative systems with a view to simplifying and standardising administrative systems throughout the region;
(f) Ensure that intellectual property legislation conform to the TRIPS Agreement of the World Trade Organisation through the review of intellectual property laws and introduction of TRIPS-consistent laws. This would begin with a comprehensive review of existing legislation to be completed by the year 2000; and
(g) Strengthen intellectual property administration by setting up an ASEAN electronic database by the year 2004 on patents, designs, geographical indications, trademarks and information on copyright and layout design of integrated circuits.

2.7.3 Cooperation

(f) Promote Intellectual Property public and private sector awareness;
(g) Introduce Intellectual Property as a subject in the curriculum of higher learning institutions;
(h) Develop training programmes for Intellectual Property officials; and
(i) Enhance intellectual property enforcement and protection through establishing mechanisms for the dissemination of information on ASEAN intellectual property administration, registration and infringement; facilitating interaction among legal and judicial bodies through seminars, etc.; facilitating networking among intellectual enforcement agencies; encouraging bilateral/plurilateral arrangements on mutual protection and joint cooperation in enforcement of Intellectual Property Rights.

2.8 Encourage electronic commerce.

2.8.1 Create policy and legislative environment to facilitate cross-border Electronic Commerce;

2.8.2 Ensure the coordination and adoption of framework and standards for cross-border Electronic Commerce, which is in line with international standards and practices; and

2.8.3 Encourage technical cooperation and technology transfer among Member States in the development of Electronic Commerce infrastructure, applications and services.

III. Promote Science & Technology Development and Develop Information on Technology Infrastructure

3.1 Establish the ASEAN Information Infrastructure (AII).

3.1.1 Forge agreements among Member Countries on the design, standardization, inter-connection and inter-operability of Information Technology systems by 2001.

3.1.2 Ensure the protection of intellectual property rights and consumer rights.

3.2 Develop the information content of the AII by 2004.

3.3 Establish networks of science & techonology centres of excellence and academic institutions by 2001.

3.4 Intensify research & development (R&D) in applications of strategic and enabling technologies.

3.5 Establish a technology scan mechanism and institutionalise a system of science & technology indicators by 2001.

3.6 Develop innovative systems for programme management and revenue generation to support ASEAN science and technology.

3.7 Promote greater public and private sector collaboration in science and technology, particularly in information technology.

3.8 Undertake studies on the evolution of new working conditions and living environments resulting from widespread use of information technology by 2001.

V. Promote Human Resource Development

5.8 Begin to implement the ASEAN Science and Technology Human Resource Programme addressing the needs of industry and business by 2000.

5.10 Establish networks of professional accreditation bodies to promote regional mobility and mutual recognition of technical and professional credentials and skills standards, beginning in 1999.

VI. Protect the Environment and Promote Sustainable Development

6.10 Establish a regional centre or network for the promotion of environmentally sound technologies by the year 2004.

* * *

III. INTER-REGIONAL LEVEL

1. European Union – Mercosur : Interregional Framework Co-operation Agreement*

Interregional Framework Cooperation Agreement between the European Community and its Member States, of one Part, and the Southern Common Market and its Party States, of the other Part

Article 9
Cooperation regarding intellectual property

1. The Parties shall agree to cooperate in intellectual property matters in order to encourage investment, the transfer of technology, trade and all associated economic activity, and to prevent distortions of trade.

2. Within the bounds of their respective laws, regulations and policies, and in line with the undertakings made within the TRIPs agreement, the Parties shall ensure that there is suitable and genuine protection of intellectual property rights, if necessary by arranging for such protection to be stepped up.

3. To the ends described in paragraph 2, intellectual property matters shall encompass copyright and similar rights, trademarks or brands, geographical terms and descriptions of origin, industrial designs and utility models, patents and integrated circuit topography.

Article 10
Objectives and principles

1. Guided by their mutual interests and their medium- and long-term economic objectives, the Parties shall promote economic cooperation in such a way as to help to expand their economies, increase their international competitiveness, foster technical and scientific development, improve their standards of living, establish conditions conducive to job creation and job quality and diversify and strengthen
economic links between them.
[…]

4. In the light of the foregoing, the Parties shall cooperate in all areas which will foster economic and social links and networks between them and which will bring their economies closer together, as well as in all areas in which there is a transfer of specific know-how relating to regional integration.

Article 11
Cooperation in business

1. The Parties shall promote cooperation in business with the aim of establishing a climate which favours economic development in their mutual interest.

* European Union – Mercosur : Interregional Framework Co-operation Agreement (1993): <http://www.sice.oas.org/trade/mrcsr/merco%5Feu/m%5Feu%5Ftoc.asp>

2. Such cooperation shall focus in particular on:

(a) increasing the flow of trade, investment, industrial cooperation projects and the transfer of technology;

3. Cooperation shall essentially take the following forms:

(a) more organized contact between the Parties' operators and networks, through conferences, technical seminars, fact-finding missions, attendance at general and specialist fairs and business meetings;
(b) suitable initiatives to back cooperation between small and medium-sized enterprises, such as the promotion of joint ventures,the establishment of information networks, encouraging the opening of trade offices, the transfer of specialist know-how, subcontracting, applied research, licensing and franchising;
(c) promoting initiatives to increase cooperation between Mercosur economic operators and European associations, with the aim of establishing dialogue between networks;
(d) training schemes, encouraging the establishment of networks and backing for research.

Article 13
Cooperation regarding energy

1. Cooperation between the Parties shall be directed towards encouraging closer relations between their economies in energy-related industries, taking into consideration the need to use energy rationally and in a manner which respects the environment.

2. Cooperation regarding energy shall essentially take the following forms:

(a) exchanges of information in all appropriate forms, particularly through joint meetings;
(b) transfers of technology;
(c) encouraging the involvement of the Parties' economic operators in joint technological development or infrastructure projects;
(d) technical training programmes;
(e) to the extent that their spheres of competence allow, dialogue regarding energy policy.

3. Where appropriate, the Parties may conclude specific agreements of common interest.

Article 15
Cooperation in science and technology

1. The Parties shall agree to cooperate in the field of science and technology with the aim of promoting a lasting working relationship between their scientific communities and exchanging information and know-how regarding science and technology between the regions.

2. Cooperation in science and technology between the Parties shall be conducted as a matter of priority by means of:

(a) joint research projects in fields of common interest;
(b) exchanges of scientists in order to encourage joint research,prepare projects and provide high-calibre training;
(c) joint scientific conferences to exchange information, promote interaction and facilitate the selection of subjects for joint research;
(d) the publicizing of results and development of links between the public and private sectors.

3. Such cooperation shall involve the Parties' centres of higher education and research and their industries, particularly small and medium-sized enterprises.

4. The Parties shall agree between them the scope, nature and priorities of cooperation through a multi-annual programme which can be adapted to suit the circumstances.

Article 16
Cooperation in telecommunications and information technology

1. The Parties shall agree to establish cooperation regarding telecommunications and information technology, with the aim of fostering economic and social development, driving the information society forward and making modernization of society easier.

2. Cooperation in this field shall seek especially to:

(a) facilitate the establishment of dialogue on the various features of the information society and promote the exchange of information on standards, inspection and certification in the field of information technology and telecommunications;
(b) disseminate new telecommunications and information technology, particularly in the fields of integrated services digital networks, data transmission and the establishment of new communications and information-technology services;
(c) stimulate the launching of joint research, industrial and technological development projects in the field of new communications technologies, telematics and the information society.

* * *

2. Interregional Framework Cooperation Agreement between the European Community and its Member States, of the One part, and the Southern Common Market and its Party States, of the Other Part*

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* Cooperation Agreement between the EC and its Member States, and the Southern Common Market and its Party States (1995):
European Communities (1999). "Interregional Framework Cooperation Agreement between the European Community and Its Member States, of the One Part, and the Southern Common Market and Its Party States, of the Other Part", *Official Journal of the European Communities*, L 112/66, 29 April 1999, pp. 66-77

(a) More organized contact between the Parties' operators and networks, through conferences, technical seminars, fact-finding missions, attendance at general and specialist fairs and business meetings;
(b) Suitable initiatives to back cooperation between small and medium-sized enterprises, such as the promotion of joint ventures, the establishment of information networks, encouraging the opening of trade offices, the transfer of specialist know-how, subcontracting, applied research, licensing and franchising;
(c) Promoting initiatives to increase cooperation between Mercosur economic operators and European associations, with the aim of establishing dialogue between networks;
(d) Training schemes, encouraging the establishment of networks and backing for research.

Article 13
Cooperation regarding energy

1. Cooperation between the Parties shall be directed towards encouraging closer relations between their economies in energy-related industries, taking into consideration the need to use energy rationally and in a manner which respects the environment.

2. Cooperation regarding energy shall essentially take the following forms:

(a) Exchanges of information in all appropriate forms, particularly through joint meetings;
(b) Transfers of technology;
(c) Encouraging the involvement of the Parties' economic operators in joint technological development or infrastructure projects;
(d) Technical training programmes;
(e) To the extent that their spheres of competence allow, dialogue regarding energy policy.

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(c) Joint scientific conferences to exchange information, promote interaction and facilitate the selection of subjects for joint research;

(d) Publishing of results and development of links between the public and private sectors.

3. Such cooperation shall involve the Parties' centres of higher education and research and their industries, particularly small and medium-sized enterprises.

4. The Parties shall agree between them the scope, nature and priorities of cooperation through a multi-annual programme which can be adapted to suit the circumstances.

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(c) stimulate the launching of joint research, industrial and technological development projects in the field of new communications technologies, telematics and the information society.

* * *

3. Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Members States, of the Other Part*

Paying particular attention to the pledges made at the Rio, Vienna, Cairo, Copenhagen, Beijing, Istanbul and Rome UN conferences and acknowledging the need for further action to be taken in order to achieve the goals and implement the action programmes which have been drawn up in those fora;
[…]

Article 21
Investment and private sector development

1. Cooperation shall support the necessary economic and institutional reforms and policies at national and/or regional level, aiming at creating a favourable environment for private investment, and the development of a dynamic, viable and competitive private sector. Cooperation shall further support:

(a) the promotion of public-private sector dialogue and cooperation;
(b) the development of entrepreneurial skills and business culture;
(c) privatisation and enterprise reform; and
(d) development and modernisation of mediation and arbitration systems.

2. Cooperation shall also support improving the quality, availability and accessibility of financial and non-financial services to private enterprises, both formal and informal; by:

(a) catalysing and leveraging flows of private savings, both domestic and foreign, into the financing of private enterprises by supporting policies for developing a modern financial sector including a capital market, financial institutions and sustainable microfinance operations;
(b) the development and strengthening of business institutions and intermediary organisations, associations, chambers of commerce and local providers from the private sector supporting and providing non-financial services to enterprises such as professional, technical, management, training and commercial support services; and
(c) supporting institutions, programmes, activities and initiatives that contribute to the development and transfer of technologies and know-how and best practices on all aspects of business management.

3. Cooperation shall promote business development through the provision of finance, guarantee facilities and technical support aimed at encouraging and supporting the creation, establishment, expansion, diversification, rehabilitation, restructuring, modernisation or privatisation of dynamic, viable and competitive enterprises in all economic sectors as well as financial intermediaries such as development finance and venture capital institutions, and leasing companies by:

* Cotonou Agreement (2000):
<http://europa.eu.int/comm/development/cotonou/index_en.htm>

(a) creating and/or strengthening financial instruments in the form of investment capital;
(b) improving access to essential inputs such as business information and advisory, consultancy or technical assistance services;
(c) enhancement of export activities, in particular through capacity building in all trade-related areas; and
(d) encouraging inter-firm linkages, networks and cooperation including those involving the transfer of technology and know-how at national, regional and ACP-EU levels, and partnerships with private foreign investors which are consistent with the objectives and guidelines of ACP-EC Development cooperation.

4. Cooperation shall support microenterprise development through better access to financial and non-financial services; an appropriate policy and regulatory framework for their development; and provide training and information services on best practices in microfinance.

5. Support for investment and private sector development shall integrate actions and initiatives at macro, meso and micro economic levels.

Article 23
Economic sector development

Cooperation shall support sustainable policy and institutional reforms and the investments necessary for equitable access to economic activities and productive resources, particularly:

(a) the development of training systems that help increase productivity in both the formal and the informal sectors;
(b) capital, credit, land, especially as regards property rights and use;
(c) development of rural strategies aimed at establishing a framework for participatory decentralised planning, resource allocation and management;
(d) agricultural production strategies, national and regional food security policies, sustainable development of water resources and fisheries as well as marine resources within the economic exclusive zones of the ACP States. Any fishery agreement that may be negotiated between the Community and the ACP States shall pay due consideration to consistency with the development strategies in this area;
(e) economic and technological infrastructure and services, including transport, telecommunication systems, communication services and the development of information society;
(f) development of competitive industrial, mining and energy sectors, while encouraging private sector involvement and development;
(g) trade development, including the promotion of fair trade;
(h) development of business, finance and banking; and other service sectors;
(i) tourism development; and
(j) development of scientific, technological and research infrastructure and services; including the enhancement, transfer and absorption of new technologies;

(k) the strengthening of capacities in productive areas, especially in public and private sectors.

Article 25
Social sector

1. Cooperation shall support ACP States' efforts at developing general and sectoral policies and reforms which improve the coverage, quality of and access to basic social infrastructure and services and take account of local needs and specific demands of the most vulnerable and disadvantaged, thus reducing the inequalities of access to these services. Special attention shall be paid to ensuring adequate levels of public spending in the social sectors. In this context, cooperation shall aim at:

(a) improving education and training, and building technical capacity and skills;
(b) improving health systems and nutrition, eliminating hunger and malnutrition, ensuring adequate food supply and security;
(c) integrating population issues into development strategies in order to improve reproductive health, primary health care, family planning; and prevention of female genital mutilation;
(d) promoting the fight against HIV/AIDS;
(e) increasing the security of household water and improving access to safe water and adequate sanitation;
(f) improving the availability of affordable and adequate shelter for all through supporting low-cost and low-income housing programs and improving urban development; and
(g) encouraging the promotion of participatory methods of social dialogue as well as respect for basic social rights.

2. Cooperation shall also support capacity-building in social areas such as programmes for training in the design of social policies and modern methods for managing social projects and programmes; policies conducive to technological innovation and research; building local expertise and promoting partnerships; and round-table discussions at national and/or regional level.

3. Cooperation shall promote and support the development and implementation of policies and of systems of social protection and security in order to enhance social cohesion and to promote self-help and community solidarity. The focus of the support shall, *inter-alia*, be on developing initiatives based on economic solidarity, particularly by setting-up social development funds adapted to local needs and actors.

Article 28
General approach

Cooperation shall provide effective assistance to achieve the objectives and priorities which the ACP States have set themselves in the context of regional and sub-regional cooperation and integration, including inter-regional and intra-ACP cooperation. Regional Cooperation can also involve Overseas Countries and Territories (OCTs) and outermost regions. In this context, cooperation support shall aim to:

(a) foster the gradual integration of the ACP States into the world economy;
(b) accelerate economic cooperation and development both within and between the regions of the ACP States;
(c) promote the free movement of persons, goods, services, capital, labour and technology among ACP countries;
(d) accelerate diversification of the economies of the ACP States; and coordination and harmonisation of regional and sub-regional cooperation policies; and
(e) promote and expand inter and intra-ACP trade and with third countries.

Article 30
Regional Cooperation

1. Cooperation shall, in the area of regional cooperation, support a wide variety of functional and thematic fields which specifically address common problems and take advantage of scale of economies, including:

(a) infrastructure particularly transport and communications and safety thereof and services, including the development of regional opportunities in the area of Information and Communication Technologies (ICT);
(b) the environment; water resource management and energy;
(c) health, education and training;
(d) research and technological development;
(e) regional initiatives for disaster preparedness and mitigation; and
(f) other areas, including arms control, action against drugs, organised crimes, money laundering, bribery and corruption.

2. Cooperation shall also support inter and intra-ACP cooperation schemes and initiatives.

3. Cooperation shall help promote and develop a regional political dialogue in areas of conflict prevention and resolution; human rights and democratisation; exchange, networking, and promotion of mobility between the different actors of development, in particular in civil society.

Article 32
Environment and natural resources

1. Cooperation on environmental protection and sustainable utilisation and management of natural resources shall aim at:

(a) mainstreaming environmental sustainability into all aspects of development cooperation and support programmes and projects implemented by the various actors;
(b) building and/or strengthening the scientific and technical human and institutional capacity for environmental management for all environmental stakeholders;
(c) supporting specific measures and schemes aimed at addressing critical sustainable management issues and also relating to current and future regional and international commitments concerning mineral and natural resources such as:

(i) tropical forests, water resources, coastal, marine and fisheries resources, wildlife, soils, biodiversity;
(ii) protection of fragile ecosystems (e.g. coral reef);
(iii) renewable energy sources notably solar energy and energy efficiency;
(iv) sustainable rural and urban development;
(v) desertification, drought and deforestation;
(vi) developing innovative solutions to urban environmental problems; and
(vii) promotion of sustainable tourism.

(d) Taking into account issues relating to the transport and disposal of hazardous waste.

2. Cooperation shall also take account of:

(a) the vulnerability of small island ACP countries, especially to the threat posed by climate change;
(b) the worsening drought and desertification problems especially of least developed and land-locked countries; and
(c) institutional development and capacity building.

Article 43
Information and Communication Technologies, and Information Society

1. The Parties recognise the important role of information and communication technologies, as well as the active participation in the Information Society, as a pre-requisite for the successful integration of the ACP countries into the world economy.

2. They therefore reconfirm their respective commitments under existing multilateral agreements, in particular the protocol on Basic Telecommunications attached to the GATS, and invite those ACP countries, which are not yet members of these agreements, to accede to them.

3. They furthermore agree to participate fully and actively in any future international negotiation, which might be conducted in this area.

4. The Parties will therefore take measures that will enable inhabitants of ACP countries easy access to information and communication technologies, through, amongst other, the following measures:

- the development and encouragement of the use of affordable renewable energy resources;
- the development and deployment of more extensive low-cost wireless networks.

5. The Parties also agree to step up cooperation between them in the area of information and communication technologies, and the Information Society. This cooperation shall, in particular, be directed towards greater complementarity and harmonisation of communication systems, at national, regional and international level and their adaptation to new technologies.

Article 44
General Provisions

1. The Parties acknowledge the growing importance of new areas related to trade in facilitating progressive integration of the ACP States into the world economy. They therefore agree to strengthen their cooperation in these areas by establishing full and coordinated participation in the relevant international fora and agreements.

2. The Community shall support the ACP States' efforts, in accordance with the provisions set out in this Agreement and the development strategies agreed between the Parties to strengthen their capacity to handle all areas related to trade, including, where necessary, improving and supporting the institutional framework.

Article 46
Protection of Intellectual Property Rights

1. Without prejudice to the positions of the Parties in multilateral negotiations, the Parties recognise the need to ensure an adequate and effective level of protection of intellectual, industrial and commercial property rights, and other rights covered by TRIPS including protection of geographical indications, in line with the international standards with a view to reducing distortions and impediments to bilateral trade.

2. They underline the importance, in this context, of adherence to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to the WTO Agreement and the Convention on Biological Diversity (CBD).

3. They also agree on the need to accede to all relevant international conventions on intellectual, industrial and commercial property as referred to in Part I of the TRIPS Agreement, in line with their level of development.

4. The Community, its Member States and the ACP States may consider the conclusion of agreements aimed at protecting trademarks and geographical indications for products of particular interest of either Party.

5. For the purpose of this Agreement, intellectual property includes in particular copyright, including the copyright on computer programmes, and neighbouring rights, including artistic designs, and industrial property which includes utility models, patents including patents for bio-technological inventions and plant varieties or other effective sui generis systems, industrial designs, geographical indications including appellations of origin, trademarks for goods or services, topographies of integrated circuits as well as the legal protection of data bases and the protection against unfair competition as referred to in Article 10a of the Paris Convention for the Protection of Industrial Property and protection of undisclosed confidential information on know how.

6. The Parties further agree to strengthen their cooperation in this field. Upon request and on mutually agreed terms and conditions cooperation shall *inter alia* extend to the following areas: the preparation of laws and regulations for the protection and enforcement of intellectual property rights, the prevention of the abuse of such rights by right-holders and the infringement of such rights by competitors, the establishment and reinforcement of domestic and regional offices and other agencies including support for regional intellectual property organisations involved in enforcement and protection, including the training of personnel.

Article 79

1. Technical cooperation shall assist the ACP States in the development of national and regional manpower resources, the sustained development of the institutions critical for development success, including inter alia strengthening ACP consulting firms and organisations, as well as exchange arrangements involving consultants from both ACP and EU firms.

2. Furthermore, technical cooperation, shall be cost-effective and relevant to the need for which it is intended, and shall also favour the transfer of know-how and increase national and regional capabilities. Technical cooperation shall contribute to the achievement of project and programme goals, including efforts to strengthen management capacity of the National and Regional Authorising Officers. Technical assistance shall:

[…]

f. aim at developing knowledge of national and regional manpower constraints and potential and establish a register of ACP experts, consultants and consultancy firms suitable for employment on projects and programmes financed from the Fund;

g. support intra-ACP technical assistance in order to promote the exchange between the ACP States of technical assistance, management and professional expertise;

[…]

3. Technical assistance may be provided in all areas of cooperation and within the limits of the mandate of this Agreement. The activities covered would be diverse in scope and nature, and would be tailored to meet the needs of the ACP States.
[…]

* * *

IV. BILATERAL LEVEL

1. Project Agreement Between the Department of State, Agency for International Development (AID), an Agency of the Government of the United States of America, and an Agency of His Majesty's Government of Nepal*

The above-named parties hereby mutually agree to carry out a project in accordance with the terms set forth herein and the terms set forth in any annexes attached hereto, as checked below:
[…]

APPENDICES:
ANNEX A

The purposes of this Project Agreement are to provide a general activity description of the Integrated Cereals project covering the initial year following implementation of the major contract, and to outline HMG/AID/contractor relationships.

I. PROJECT DESCRIPTION

A. Statement of Purpose

The immediate purpose of the project is to strengthen the Ministry of Food, Agriculture and Irrigation's (MFAI's) capacity to (1) generate improved production technology for the major foodgrain crops and related cropping systems and (2) transfer that technology to farmers. This transfer of technology is an indispensable part [*4] of the larger and longer-run objective of increasing foodgrain production in the hills and the Terai of Nepal.

The project is based on a functional concept of research: i.e., outreaching adaptive research with strong linkages to the Extension Service and the farmer, both for feedback on applicability to improve research problem identification and for the promotion of acceptable technologies to increase production.

The project will build upon the facilities, organization, and staff developed by His Majesty's Government (HMG) during the past decade. As presently envisaged, the project is planned over a multi year period.

B. Project Activities

1. Adaptive Varietal and Production Technology Research

The research efforts of this project are based upon a close interaction between the traditional functions of Research and Extension--with a constant feedback between the two.

* Agreement Between the Department of State, Agency for International Development (AID), and an Agency of His Majesty's Government of Nepal (1976):
TIAS 8799, 29 U.S.T. 114; 1976 U.S.T. LEXIS 27

The project will focus on the principal foodgrains, rice, maize, and wheat, although attention will also be given to minor food crops such as millet, barley, pulses, and potatoes.

The research program will combine commodity and subject matter oriented programs into a farming systems approach. This approach will require improved problem identification: i.e., an improved understanding of farming systems in different geographic areas; improved definitions of pressure points in the system; improved identification and selection of which pressure points are researchable and potentially overcome; and improved information flows of problems needing research to the National Crop Coordination Teams.

The commodity research programs will work on components of the farming system, always trying to make the new technologies fit the system and always working to move the system to a higher level of productivity. This type of production technology research involves the economic study of production packages and inputs. It combines research for developing improved varieties, for determining optimum levels of fertilization and for developing better cultural practices, including intercropping and multiple cropping, with an operational research aspect for testing the different technologies under different agro, socio, and economic conditions.

Research activities will be specified in workplans to be jointly prepared by the Contractor and HMG within 90 days of the arrival of the Contract Team Leader. In general terms, the following research activities are planned during the first year of the project:

(a) A system will be designed to coordinate the traditional Research and Extension functions, with a two-way flow of information from one to the other. Manpower projections and training plans will also be developed for the Department of Agriculture and the National Coordinated Crop Programs.
(b) An interdisciplinary team composed of crop specialists, a farming systems specialist, a livestock specialist, and at least one agricultural economist from the Ministry of Food, Agriculture, and Irrigation will be organized and will be sponsoring (or conducting) studies and definitions of farming sytems and pressure points and setting research priorities for the National Crop Coordination Teams.
(c) Collection and testing programs will have begun for several minor crops, barley, millet, oilseed, pulses, and potatoes.
(d) Continued varietal research will be conducted by the Rice, Maize, and Wheat Coordination Teams--i.e., development, selection, and testing under varying conditions.
(e) Extensive field testing and demonstrations of recommended varieties and practices under actual farm conditions will be conducted. Results will be measured by their technical and economic feasibility.

* * *

2. The Republic of Tunisia (Cooperating Country) and The United States of America, acting through the Agency for International Development ("A.I.D.")*

Article 2
The Project

SECTION 2.1. Definition of Project. The Project, which is further described in Annex 1, will consist of a Participant Training Program to assist the Government of Tunisia in development of an agricultural cadre to identify, select, and manage the future agricultural technology of the country. Annex 1, attached, contains the detailed project description cited in this Section and identifies those elements of the Project for which Grant financing will be employed. Within the limits of the above definition of the Project, elements of the description contained in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 8.2, without formal amendment of this Agreement.
[…]

APPENDICES:
ANNEX 1

GRANT AGREEMENT

THE PROJECT

The Project will provide, through participant training of up to 79 M.S. and Ph.D students, a major input of scientific agricultural leadership where trained personnel are lacking, to greatly increase Tunisia's ability to train Tunisians to the M.S./Ph.D levels. Directly and indirectly this will strengthen staffing of both the national centers of agricultural teaching and research and the regional institutes that have been established recently to permit effective addressing of problems of small farms throughout the semi-arid regions of the nation through an effective adaptive research and extension program. Both the institutional capability and the information (technology) base for sound technology transfer in the Central and Southern regions are lacking. Changes in village and grazing systems are essential to arrest the rapid deterioration of the land resources through these regions which threatens the existence of multitudes of small owner-operated farms and to begin to realize the much higher production potential for cereals and meat, two commodities now being imported. Some participants will be trained in horticulture and food technology to provide the science base and technology to use limited irrigation resources to capitalize on climatic advantages in early vegetable and fruit production and to improve grading packaging, processing and marketing of these products both domestically and for export. It is vital to develop and provide to small farmers alternative technologies tested in the local areas that will permit a shift from existing practices that are causing ever more rapid deterioration of land by wind and water erosion.

* Agreement between Tunisia and the United States of America (1978):
TIAS 9535, 30 U.S.T. 6005; 1978 U.S.T. LEXIS 345, A.I.D. Project No. 664-0304

Short-term training, consultants, faculty thesis research advisors and commodities, including library materials, are provided in support of the participant training and program efforts of the eleven agricultural institutions involved.

The Project funding will be provided in increments and is expected to total $ 4.5 million. It is expected that technical assistance will be provided by a contract between the Government of Tunisia (GOT) and the Mid-America International Agricultural Consortium (MIAC).

1. U.S. Contribution

a. The A.I.D. contribution will finance the following items:

(1) long-term training
(2) Short-term training
(3) U.S. university thesis research supervisor and faculty advisors of thesis research in Tunisia
(4) Consultants
(5) Commodities to support thesis research, including strengthening library and soil testing capabilities
(6) Administrative and coordinating support
(7) Support for periodic project evaluation
(8) U.S. graduate research student assistants

2. Government of Tunisia (GOT) Contribution

The Government of Tunisia (GOT) contribution will consist of direct budget support of salary and GOT counterparts, in-country transportation, office, workshop, laboratory, and conference facilities, supplies and services. The GOT will also provide for participant international travel, medical examinations, and other participant processing and in-country transportation for the full-time U.S. thesis advisors, and U.S. graduate research student assistants.
[…]

* * *

3. Agreement between the Government of Australia and the Government of the Islamic Republic of Pakistan on Development Co-operation*

Desiring to strengthen the existing cordial relations between the two countries,

HAVE AGREED as follows:

Article 1
Purpose

Both Governments shall co-operate in a Program in support of the developmental needs of Pakistan while promoting mutual economic links.

Article 2
Activities of the program of development co-operation

1. The Program shall be directed to assisting those sectors of the economy of Pakistan to which the Government of the Islamic Republic of Pakistan accords greatest priority and in which the Government of Australia has expertise and comparative advantage. The following sectors have been targetted for possible activities:

(a) Mining and mineral exploration technology and the relevant infrastructure;
(b) Telecommunications;
(c) Beef/dairy cattle;
(d) Food processing and post-harvest technology;
(e) Port development.

2. The Program undertaken by the Government of Australia pursuant to this Agreement shall be in support of specific projects and related activities undertaken within such sectors.
[…]

Article 3
Definitions

In this Agreement:
[…]
(e) "intellectual property" shall include the rights relating to:

(i) literary, artistic and scientific works and subject matter (including integrated circuits layouts), usually referred to as copyright;
(ii) inventions in all fields of human endeavour, usually referred to as patents;

* Agreement between Australia and Pakistan on Development Co-operation (1991):
AUSTRALIAN TREATY SERIES, 1991 No. 35, Australian Government Publishing Service, Canberra, Commonwealth of Australia 1995, and <http://www.austlii.edu.au/au/other/dfat/treaties/1991/35.html>

(iii) scientific discoveries;
(iv) industrial designs;
(v) trademarks, service marks and commercial names and designations (whether registered or not);
(vi) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including any rights in intellectual activity arising solely or partly by the restraint of breach of confidence;

(f) "personal and household effects" means equipment and other goods imported by members of the Australian personnel for the personal use of Australian personnel or their dependants; and

(g) "project" means a self-contained activity based on a mutually approved design and involving the provision of Australian services and project supplies.

Article 7
Specific activities

1. In order to give effect to the Program the two parties to this Agreement may enter into arrangements in writing for the purpose of carrying out specific activities.
[…]

Article 13
Intellectual property

1. Each Government shall not, without the written approval of the other Government, make any use of intellectual property arising from the implementation of this Agreement or do anything whereby such intellectual property rights could be prejudiced.

2. The two Governments shall discuss and jointly determine:

(a) the equitable allocation of ownership of all intellectual property arising directly or indirectly from collaborative projects under this Agreement;

(b) the equitable licensing of such intellectual property; and

(c) where it is within their power, the equitable licensing of such other intellectual property as is necessary for the utilisation of the results of the project.

3. In fulfilling their obligations under paragraph 2 of this Article, the two Governments shall have regard to relevant considerations, including:

(a) the intellectual contributions of each country;
(b) the financial contributions of each country;
(c) the contribution of intellectual property, materials, research effort and preparatory work of each country;
(d) the facilities provided by each country; and
(e) such other considerations as the Governments may mutually determine.

* * *

4. Agreement between the Government of Australia and the Government of the United Mexican States Concerning Cooperation in Peaceful Use of Nuclear Energy and the Transfer of Nuclear Material*

[…]
Confirming the desire of the Parties to cooperate in the development and application of nuclear energy for peaceful purposes,
[…]
Desiring to establish conditions consistent with their commitment to non-proliferation under which nuclear material can be transferred between Australia and the United Mexican States for peaceful purposes,

Article I

The Parties shall cooperate in the peaceful uses of nuclear energy in accordance with the provisions of this Agreement. The cooperation contemplated relates to the peaceful uses of nuclear energy and includes transfer of nuclear material, research and development, exchange of information, technical training, visits by scientists and projects of mutual interest. This cooperation shall be facilitated as may be necessary by specific agreements or arrangements. The Parties may designate governmental authorities and natural or legal persons to undertake such cooperation
[…]

Article IX

1. Nuclear material subject to this Agreement shall not be:

(a) transferred beyond the territorial jurisdiction of the recipient Party; or
[…]

ANNEX A

1. During the course of the negotiations between Australia and the United Mexican States, both Parties discussed the manner in which the provisions of Article IX.1(a) of the Agreement would apply.

2. In light of those discussions, the following conclusions were reached:

(a) Transfers of nuclear material subject to the Agreement from the United Mexican States to third countries which have an agreement in force with Australia concerning nuclear transfers, in relation to which agreement the Australian Government has not advised the Government of the United Mexican States that it has found it necessary to suspend, cancel or refrain from making nuclear

* Agreement between Australia and the United Mexican States Concerning Cooperation in Peaceful Use of Nuclear Energy and the Transfer of Nuclear Material (1992):
AUSTRALIAN TREATY SERIES, 1992 No. 32, Commonwealth of Australia 1995, and <http://www.austlii.edu.au/au/other/dfat/treaties/1992/32.html>

transfers, can take place for conversion, enrichment below 20% in the isotope uranium-235 and fuel fabrication.

(b) The United Mexican States shall promptly notify Australia, in accordance with procedures set out in the Administrative Arrangement, of such transfers.

(c) Australia shall provide the United Mexican States with, and keep up to date, the list of countries to which transfers may be made in accordance with subparagraph (a) above.

* * *

5. Agreement on Scientific and Technological Cooperation between the Government of the Republic of Korea and the Government of the People's Republic of Bangladesh*

The Government of the Republic of Korea and the Government of the People's Republic of Bangladesh (hereinafter referred to as "the Contracting Parties"),

Desirous of strengthening friendly relationship between the two countries and promoting the development of cooperation in the fields of science and technology,

Recognizing the importance of science and technology in the national economies of both countries,

Have agreed as follows:

Article 1

The Contracting Parties whose principal competent authorities to implement this Agreement will be their respective ministries of science and technology, shall promote, in accordance with their respective laws and regulations, the cooperation in the fields of science and technology between the two countries on the basis of equality and mutual benefit.

Article 2

The cooperation under this Agreement may include the following forms:

1. the exchange of scientists, researchers, technical personnel and experts;
2. the exchange of documentation and information of scientific and technological nature;
3. joint organization of scientific and technological seminars, symposia, conferences and other meetings;
4. implementation of joint research and experiment on subjects of mutual interest as well as exchange of its results;
5. transfer of technology as between the Contracting Parties in accordance with their respective stage of development; and
6. any other forms of scientific and technological cooperation as agreed upon by the Contracting Parties.

Article 3

1. With a view to facilitating scientific and technological cooperation, the Contracting Parties shall encourage, if necessary, the conclusion of supplementary arrangements to carry out cooperative activities between their government agencies, research institutes, universities

* Agreement on Scientific and Technological Cooperation between Korea and Bangladesh (1995): <http://mofat.go.kr/main/etop.html>

and other relevant institutions within the framework of this Agreement. Such arrangements shall be concluded in accordance with the laws and regulations in force of the two countries.

2. The arrangements mentioned in paragraph 1 of this Article shall include the terms, conditions and procedures to be followed of particular cooperative activities and other relevant matters.

Article 4

1. In order to ensure optimum conditions for the application of this Agreement, the Contracting Parties shall establish a Joint Committee on Scientific and Technological Cooperation which shall consist of representatives designated by the two Governments.

2. The tasks of the Joint Committee shall be:

(a) review of the progress in cooperative activities under this Agreement;
(b) definition of new areas of cooperation under this Agreement;
(c) discussion of other matters related to this Agreement.

3. The Joint Committee shall meet, if necessary, alternately in the Republic of Korea and the People's Republic of Bangladesh on mutually agreed date.

Article 5

The cooperation under this Agreement shall be subject to the applicable laws and regulations in force respectively in the two countries.

Article 6

1. The treatment of intellectual property arising from the cooperative activities under this Agreement shall be provided for in the supplementary arrangements mentioned in Article 3 of this Agreement.

2. Scientific and technological information of a non-proprietary nature derived from the cooperative activities shall be made available, unless otherwise agreed, to the third party in accordance with the customary procedures of the participating agencies.

Article 7

The Contracting Parties shall bear the expenses incurred in connection with the cooperative activities under this Agreement on the basis of the principle of equality and reciprocity and in accordance with the availability of assets.

Article 8

This Agreement shall not affect the validity or execution of any obligation arising from other international treaties or agreements concluded by either Contracting Party.

Article 9

1. This Agreement shall enter into force thirty days after the date of its signature.

2. This Agreement shall remain in force for a period of ten years and continue in force thereafter for successive periods of ten years unless either Contracting Party notifies the other one in writing six months in advance of its intention to terminate the Agreement.

3. This Agreement shall be revised by mutual consent. Any revision or termination of this Agreement shall be effected without prejudice to any right or obligation accruing or incurred under this Agreement prior to the effective date of such revision or termination.

* * *

6. Canada – Chile: Free Trade Agreement*

Build on their respective rights and obligations under the Marrakech Agreement Establishing the World Trade Organization and other multilateral and bilateral instruments of cooperation;

Article A-02
Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favoured-nation treatment and transparency, are to:

(a) Eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
(b) Promote conditions of fair competition in the free trade area;
(c) Increase substantially investment opportunities in the territories of the Parties;
(d) Create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
(e) Establish a framework for further bilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Article G-06
Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non Party in its territory:

(f) To transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

* Free Trade Agreement (1997):
The Government of Canada and the Government of Chile (1997). "Canada-Chile Free Trade Agreement", *International Legal Materials*, Volume 36, Number 5, September 1997; and
<http://www.sice.oas.org/trade/chican_e/chcatoc.asp>

(g) To act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f)…

* * *

7. Treaty between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan Concerning the Encouragement and Reciprocal Protection of Investments*

Article I
Definitions

For the purposes of this Treaty,

(a) "company" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venure, association, or other organization;
(b) "company of a Contracting Party" means a company constituted or organized under the laws of that Contracting Party;
(c) "national" of a Contracting Party means a natural person who is a national of that Contracting Party under its applicable law;
(d) "investment" of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment consisting or taking the form of:

  (i) a company;
  (ii) shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;
  (iii) contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;
  (iv) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;
  (iv) intellectual property, including; copyrights and related rights, industrial property rights, patents, rights in plant varieties, utility models, industrial designs or models, rights in semiconductor layout design, indications of origin, trade secrets, including know-how, confidential business information, trade and service marks, and trade names; and
  (vi) rights conferred pursuant to law, such as licenses and permits; any change in the form of an investment does not affect its character as an investment;

(e) "covered investment" means an investment of a national or company of a Contracting Party in the territory of the other Contracting Party;
(f) "state enterprise" means a company owned, or controlled through ownership interests, by a Contracting Party;
(g) "investment authorization" means an authorization granted by the foreign investment authority of a Contracting Party to a covered investment or a national or company of the other Contracting Party;

* Treaty between the United States of America and Kingdom of Jordan (1997): *International Legal Materials*, Volume 36, Number. 6, November 1997.

(h) "investment agreement" means a written agreement between the national authorities of a Contracting Party and a covered investment or a national or company of the other Contracting Party that

(i) grants rights with respect to natural resources or other assets controlled by the national authorities and (ii) the investment, national or company relies upon in establishing or acquiring a covered investment;

(ii) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

(j) "Centre" means the International Centre for Settlement of Investment Disputes Established by the ICSID Convention; and

(k) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law.

Article VI

Performance Requirements

Neither Contracting Party shall mandate or enforce, as a condition for the establishment, acquisition, expansion, management, conduct or operation of a covered investment, any requirement (including any commitment or undertaking in connection with the receipt of a governmental permission or authorization):

(a) to achieve a particular level or percentage of local content, or to purchase, use or otherwise give a preference to products or services of domestic origin or from any domestic source;

(b) to limit imports by the investment of products or services in relation to a particular volume or value of production, exports or foreign exchange earnings;

(c) to export a particular type, level or percentage of products or services, either generally or to a specific market region;

(d) to limit sales by the investment of products or services in the Contracting Party's territory in relation to a particular volume or value of production, exports or foreign exchange earnings;

(e) to transfer technology**,** a production process or other proprietary knowledge to a national or company in the Contracting Party's territory, except pursuant to an order, commitment or undertaking that is enforced by a court, administrative tribunal or competition authority to remedy an alleged or adjudicated violation of competition laws; or

(f) to carry out a particular type, level or percentage of research and development in the Contracting Party's territory.

(g) Such requirements do not include conditions for the receipt or continued receipt of an advantage.

PROTOCOL

1. With respect to Article I(d), the Contracting Parties confirm their mutual understanding that either Contracting Party may require approvals or impose formal requirements in connection with a change in the form of an investment, provided that such approvals or formal requirements are otherwise consistent with this Treaty.

3. With regard to Article III(2), the term "without delay" does not necessarily mean instantaneous. The intent is that the Contracting Party diligently and expeditiously carry out necessary formalities.

* * *

8. Partnership and Co-operation Agreement between the European Communities and Their Member States and Ukraine*

Convinced that this Agreement will create a new climate for economic relations between the Parties and in particular for the development of trade and investment, which are essential to economic restructuring and technological modernization;

[…]

Article 1

A partnership is hereby established between the Community and its Member States, of the one part, and Ukraine, of the other part. The objectives of this partnership are:

- To provide an appropriate framework for the political dialogue between the Parties allowing the development of close political relations,
- To promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable development,
- To provide a basis for mutually advantageous economic, social, financial, civil scientific technological and cultural cooperation,
- To support Ukrainian efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy.

Title VI

COMPETITION, INTELLECTUAL, INDUSTRIAL AND COMMERCIAL PROPERTY PROTECTION AND LEGISLATIVE COOPERATION

Article 49

1. The Parties agree to work to remedy or remove through the application of their competition laws or otherwise, restrictions on competition by enterprises or caused by State intervention in so far as they may affect trade between the Community and the Ukraine.

2. In order to attain the objectives mentioned in paragraph 1:

2.1. The Parties shall ensure that they have and enforce laws addressing restrictions on competition by enterprises within their jurisdiction.

2.2. The Parties shall refrain from granting State aid favouring certain undertakings or the production of goods other than primary products as defined in the GATT, or

* Agreement between the EC and Their Member States and Ukraine (1998):
European Communities (1998). Partnership and Cooperation Agreement between the European Communities and their members States, and Ukraine", *Official Journal of the European Communities*, L 049, 19 February 1998, pp. 3-46. And <http://www.europa.eu.int/eur-lex/en/lif/dat/1998/en_298A0219_02.html>

the provision of services, which distort or threaten to distort competition in so far as they affect trade between the Community and Ukraine.

2.3. Upon request by one Party, the other Party shall provide information on its aid schemes or on particular individual cases of State aid. No information needs to be provided which is covered by legislative requirements of the Parties on professional or commercial secrets.

2.4. In the case of State monopolies of a commercial character, the Parties declare their readiness, as from the fourth year from the date of entry into force of this Agreement, to ensure that there is no discrimination between nationals of the Parties regarding the conditions under which goods are procured or marketed.

2.5. In the case of public undertakings or undertakings to which Member States or Ukraine grant exclusive rights, the Parties declare their readiness, as from the fourth year from the date of entry into force of this Agreement, to ensure that there is neither enacted nor maintained any measure distorting trade between the Community and Ukraine to an extent contrary to the Parties' respective interests. This provision shall not obstruct the performance, in law or fact, of the particular tasks assigned to such undertakings.

2.6. The period defined in paragraphs 2.4 and 2.5 may be extended by agreement of the Parties.

3. Consultations may take place within the cooperation Committee at the request of the Community or Ukraine on the restrictions or distortions of competition referred to in paragraphs 1 and 2 and on the enforcement of their competition rules, subject to limitations imposed by laws regarding disclosure of information, confidentiality and business secrecy. Consultations may also comprise questions on the interpretation of paragraphs 1 and 2.

4. The Parties with experience in applying competition rules shall give full consideration to providing other Parties, upon request and within available resources, technical assistance for the development and implementation of competition rules.

5. The above provisions in no way affect the Parties' rights to apply adequate measures, notably those referred to in Article 19, in order to address distortions of trade in goods or services.

Article 50

1. Pursuant to the provisions of this Article and of Annex III, Ukraine shall continue to improve the protection of intellectual, industrial and commercial property rights in order to provide, by the end of the fifth year after the entry into force of the Agreement for a level of protection similar to that existing in the Community, including effective means of enforcing such rights.

2. By the end of the fifth year after entry into force of the Agreement, Ukraine shall accede to the multilateral conventions on intellectual, industrial and commercial property rights referred to in paragraph 1 of Annex III to which Member States are parties or

which are *de facto* applied by Member States according to the relevant provisions contained in these conventions.

Article 51

1. The Parties recognize that an important condition for strengthening the economic links between Ukraine and the Community is the approximation of Ukraine's existing and future legislation to that of the Community. Ukraine shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

2. The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations, transport.

3. The Community shall provide Ukraine with technical assistance as appropriate for the implementation of these measures which may include in particular:

- The exchange of experts,
- The provision of early information especially on relevant legislation,
- organization of seminars,
- Training activities,
- Aid for translation of Community legislation in the relevant sectors.

Title VII

ECONOMIC COOPERATION

Article 53
Industrial cooperation

1. Cooperation shall aim at promoting, in particular, the following:

- The development of business links between economic operators of both sides, for example in view of the transfer of technologies and know-how,
- Community participation in Ukraine's efforts to restructure and technically upgrade its industry,
- The improvement of management,
- The development of appropriate commercial rules and practices, including product marketing,
- Environmental protection,
- Adaptation of the structure of industrial production to the standards of an advanced market economy,
- The conversion of the military-industrial complex.

2. The provisions of this Article shall not affect the enforcement of Community competition rules applicable to undertakings.

Article 58
Cooperation in science and technology

1. The Parties shall promote cooperation in civil scientific research and technological development (R+TD) on the basis of mutual benefit and, taking into account the availability of resources, adequate access to their respective programmes and subject to appropriate levels of effective protection of intellectual, industrial and commercial property rights (IPR).

2. Science and technology cooperation shall cover:

- The exchange of scientific and technical information,
- Joint R+TD activities,
- Training activities and mobility programmes for scientists, researchers and technicians engaged in R+TD in both sides.

Article 59

1. The Parties, on the basis of mutual agreement, can engage in other forms of cooperation in science and technology. In carrying out such cooperation activities, special attention shall be devoted to the redeployment of scientists, engineers, researchers and technicians who are or have been engaged in research on and production of weapons of mass destruction.
[…]

3. The cooperation covered by this Article shall be implemented according to specific arrangements to be negotiated and concluded in accordance with the procedures adopted by each Party, and which shall set out, inter alia, appropriate IPR provisions.

Article 63
Environment

3. Cooperation shall take place particularly through:

- Planning for the handling of disasters and other emergency situations,
- Exchange of information and experts, including information and experts dealing with the transfer of clean technologies and the safe and environmentally sound use of biotechnologies,
- Joint research activities,
- Improvement of laws towards Community standards
- Cooperation at regional level, including cooperation within the framework of the European Environment Agency, and at international level,
- Development of strategies, particularly with regard to global and climatic issues and also in view of achieving sustainable development,
- Environmental impact studies.

Title X

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

Article 94

Nothing in the Agreement shall prevent a Party from taking any measures:

(a) Which it considers necessary to prevent the disclosure of information contrary to its essential security interests,
(b) Which relate to the production of, or trade in arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;
(c) Which it considers essential to its own security in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security;
(d) Which it considers necessary to respect its international obligations and commitments on the control of dual-use industrial goods and technologies.

* * *

9. Agreement between the Government of the Kingdom of the Netherlands and the Government of the People's Republic of China*

Article I

1. The two Governments shall jointly execute a project to be known as "Strengthening China's environmental technology manufacturing sector" – project code CN012504.

2. The aims of the project are to assist producers of environmental technology in China in developing products of higher environmental efficiency, to strengthen main institutions involved in the design and certification of such products, to facilitate credit mechanisms for investors in such products and to promote the transfer of complementary environmental technology to China.

3. The project is planned to last 66 months, with effect from 1 September 1999.

4. The value of the Netherlands contribution is estimated at 5,234,056 Netherlands Guilders.

5. The value of the Chinese contribution is estimated at 7,700,000 RMB.

Article II

Both Governments have established by common consent a Project Document and Inception Report indicating in detail the contribution of either Party, the number of Netherlands personnel and their job-descriptions, the duration of their stay on the project and a description of the equipment an materials to be made available.

Article III

The Government of the People's Republic of China shall take any measures to enable the Netherlands personnel to execute their responsibilities in order to ensure a smooth execution of the project. The Government of the People's Republic of China shall:

1. grant the Netherlands personnel, their spouses and dependants, the prompt issuance free of charge of necessary visas, licenses or permits;

2. grant the Netherlands personnel access to the site of work and all necessary rights of way;

3. grant the Netherlands personnel free movements, whether within or to or from the country;

* Agreement between the Netherlands and people's Republic of China (2000) Tractatenblad van het Koninkrijk Der Nederlanden, JAARGANG 2000 Nr. 124; and <http://www.overheid.nl/op/>

4. grant the Netherlands personnel, their spouses and their dependants repatriation facilities in time of national and international crises;

5. grant the Netherlands personnel, their spouses and dependants exemption from national service obligations;

6. exempt the Netherlands personnel from taxes, duties or fees on:

   a) the salaries, emoluments or wages in connection with this Agreement paid by the Netherlands Government. The Agreement between the Kingdom the Netherlands and the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income of 13 May 1987 shall not apply with respect to salaries, emoluments and wages and these salaries, emoluments and wages shall thus be taxable according to the legislation of the Kingdom the Netherlands;
   b) any property, for their personal use (including one motor vehicle) imported in or exported from the People's Republic of China;

7. grant the Netherlands personnel immunity from legal action in respect of words spoken or written as regards all acts performed by them, on the understanding that immunity shall apply only insofar as those words and acts relate to the discharging of their official duty.

Article IV

Privileges and immunities are not granted to the Netherlands personnel for the personal benefit of the individuals themselves. The Netherlands Government shall waive the immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to its interests.

Article V

1. The Government of the People's Republic of China shall indemnify and hold harmless the Netherlands Government and the personnel supplied by the Netherlands against any liability, arising from any act or omission made in the course of the performance of the duties of the Netherlands personnel and causing the death or physical injury to a third party, unless such liability derives from wilful misconduct or from gross negligence on the part of one or more of the experts.

2. If Government of the People's Republic of China has to deal with any claim in accordance with the preceding paragraph the Government of the People's Republic of China will be entitled to exercise all rights to which the Netherlands or the Netherlands personnel are entitled.

Article VI

1. The Government of the People's Republic of China shall exempt from all import and export duties and other official charges the equipment (including motor-vehicles) and other supplies provided by the Netherlands Government in connection with the project.

2. The ownership of all equipment and materials supplied by the Netherlands Government will be transferred to the Government of the People's Republic of China at the end of the project, unless both Governments otherwise agree.

Article VII

1. This Agreement will enter in force for the period of one year on the day of its signature.

2. Unless the Agreement is denounced 30 days before the end of the year it is deemed to be prolonged indefinitely.

3. In case this Agreement id prolonged indefinitely the Agreement will end on the date on which the project has been completed.

4. Upon termination of the Agreement in conformity with paragraphs 2 and 3 of this Article, the provisions of the Agreement will be applied for a further period of six months maximum, with a view to the administrative completion of the project.

5. With respect to the Kingdom of the Netherlands, this Agreement shall apply to the territory in Europe only.

* * *

10. Agreement between the Government of the Kingdom of the Netherlands and the Government of the State of Kuwait for the encouragement and reciprocal protection of investments*

[…]

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development in both Contracting Parties and that fair and equitable treatment of investments is desirable,

[…]

Article 1
Definitions

For the purpose of this Agreement:
[…]

d) intellectual property rights, technical processes, goodwill, know-how, and trade names;

* * *

* Agreement between the Netherlands and Kuwait (2001)
Tractatenblad van het Koninkrijk Der Nederlanden, JAARGANG 2001 Nr. 115; and
<http://www.overheid.nl/op/>

ANNEXES

A. Intergovernmental drafts

1. Draft International Code of Conduct on the Transfer of Technology[23] [1985 VERSION]*

Preamble

The United Nations Conference on an International Code of Conduct on the Transfer of Technology,

1. *Recognizing* the fundamental role of science and technology in the socio-economic development of all countries, and in particular, in the acceleration of the development of the developing countries;

2. *Believing* that technology is key to the progress of mankind and that all peoples have the right to benefit from the advances and developments in science and technology in order to improve their standards of living;

3. *Bearing in mind* relevant decisions of the General Assembly and other bodies of the United Nations, in particular UNCTAD, on the transfer and development of technology;

4. *Recognizing* the need to facilitate an adequate transfer and development of technology so as to strengthen the scientific and technological capabilities of all countries, particularly the developing countries, and to co-operate with the developing countries in their own efforts in this field as a decisive step in the progress towards the establishment of a new international economic order;

5. *Desirous* of promoting international scientific and technological co-operation in the interest of peace, security and national independence and for the benefit of all nations;

6. *Striving* to promote an increase of the international transfer of technology with an equal opportunity for all countries to participate irrespective of their social and economic system and of their level of economic development;

7. *Recognizing* the need for developed countries to grant special treatment to the developing countries in the field of the transfer of technology;

8. *Drawing attention* to the need to improve the flow of technological information, and in particular to promote the widest and fullest flow of information on the availability of alternative technologies, and on the selection of appropriate technologies suited to the specific needs of developing countries;

* UNCTAD (1985). "Draft International Code of Conduct on the Transfer of Technology, as at the close of sixth session of Conference on June 1998" (Geneva: United Nations), United Nations publication, No. TD/Code TOT/47, 20 June.

The Appendices A, B, C, D, E And F Referred To In The Text And The Endnotes Can Be Found In The Source Document. In The Present Text, The Following Key Is Used To Identify The Sponsorship Of A Text, Where The Text Is Not An Agreed One: Group Of 77 Text: *; Group B: **; Group D And Mongolia: ***.

9. *Believing* that a Code of Conduct will effectively assist the developing countries in their selection, acquisition and effective use of technologies appropriate to their needs in order to develop improved economic standards and living conditions;

10. *Believing* that a Code of Conduct will help to create conditions conducive to the promotion of the international transfer of technology, under mutually agreed and advantageous terms to all parties;

11. 1/

12. 1/

Chapter 1
Definitions and scope of application

l.l. For the purposes of the present Code of Conduct:

(a) "Party" means any person, either natural or juridical, of public or private law, either individual or collective, such as corporations, companies, firms, partnerships and other associations, or any combination thereof, whether created, owned or controlled by States, Government agencies, juridical persons, or individuals, wherever they operate, as well as States, Government agencies and international, regional and subregional organizations, when they engage in an international transfer of technology transaction which is usually considered to be of a commercial nature. The term "party" includes, among the entities enumerated above, incorporated branches, subsidiaries and affiliates, joint ventures or other legal entities regardless of the economic and other relationships between and among them. 2/

(b) "Acquiring party" means the party which obtains a licence to use or to exploit, purchases or otherwise acquires technology of a proprietary or non-proprietary nature and/or rights related thereto in a transfer of technology.

(c) "Supplying party" means the party which licenses, sells, assigns or otherwise provides technology of a proprietary or non-proprietary nature and/or rights related thereto in a transfer of technology.

1.2. Transfer of technology under this Code is the transfer of systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service and does not extend to the transactions involving the mere sale or mere lease of goods.

1.3. Transfer of technology transactions are arrangements between parties involving transfer of technology, as defined in paragraph 1.2 above, particularly in each of the following cases:

(a) The assignment, sale and licensing of all forms of industrial property, except for trade marks, service marks and trade names when they are not part of transfer of technology transactions;

(b) The provision of know-how and technical expertise in the form of feasibility studies, plans, diagrams, models, instructions, guides, formulae, basic or detailed

engineering designs, specifications and equipment for training, services involving technical advisory and managerial personnel, and personnel training;

(c) The provision of technological knowledge necessary for the installation, operation and functioning of plant and equipment, and turnkey projects;

(d) The provision of technological knowledge necessary to acquire, install and use machinery, equipment, intermediate goods and/or raw materials which have been acquired by purchase, lease or other means;

(e) The provision of technological contents of industrial and technical co-operation arrangements.

1.4. International transfer of technology transactions. 3/

1.5. The Code of Conduct is universally applicable in scope and is addressed to all parties to transfer of technology transactions and to all countries and groups of countries, irrespective of their economic and political systems and their levels of development.

l.6. Regional groupings of States. 4/

Chapter 2
Objectives and principles

2. The Code of Conduct is based on the following objectives and principles:

3. Objectives

(i) To establish general and equitable standards on which to base the relationships among parties to transfer of technology transactions and governments concerned, taking into consideration their legitimate interests, and giving due recognition to special needs of developing countries for the fulfilment of their economic and social development objectives.

(ii) To promote mutual confidence between parties as well as their government

(iii) To encourage transfer of technology transactions, particularly those involving developing countries, under conditions where bargaining positions of the parties to the transactions are balanced in such a way as to avoid abuses of a stronger position and thereby to achieve mutually satisfactory agreements.

(iv) To facilitate and increase the international flow of technological information, particularly on the availability of alternative technologies, as a prerequisite for the assessment, selection, adaptation, development and use of technologies in all countries, particularly in developing countries.

(v) To facilitate and increase the international flow of proprietary and non-proprietary technology for strengthening the growth of the scientific and technological capabilities of all countries, in particular developing countries, so as to increase their participation in world production and trade.

(vi) To increase the contributions of technology to the identification and solution of social and economic problems of all countries, particularly the developing countries, including the development of basic sectors of their national economies.

(vii) To facilitate the formulation, adoption and implementation of national policies, laws and regulations on the subject of transfer of technology by setting forth international norms.

(viii) To promote adequate arrangements as regards unpackaging in terms of information concerning the various elements of the technology to be transferred, such as that required for technical, institutional and financial evaluation of the transaction, thus avoiding undue or unnecessary packaging.

(ix) To specify restrictive [business] practices from which parties to technology transfer transactions [shall] [should] refrain. 5/

(x) To set forth an appropriate set of responsibilities and obligations of parties to transfer of technology transactions, taking into consideration their legitimate interests as well as differences in their bargaining positions.

2.2. Principles

(i) The Code of Conduct is universally applicable in scope.

(ii) States have the right to adopt all appropriate measures for facilitating and regulating the transfer of technology, in a manner consistent with their international obligations, taking into consideration the legitimate interests of all parties concerned, and encouraging transfers of technology under mutually agreed, fair and reasonable terms and conditions.

(iii) The principles of sovereignty and political independence of States (covering, *inter alia*, the requirements of foreign policy and national security) and sovereign equality of States, should be recognized in facilitating and regulating transfer of technology transactions.

(iv) States should co-operate in the international transfer of technology in order to promote economic growth throughout the world, especially that of the developing countries. Co-operation in such transfer should be irrespective of any differences in political, economic and social systems; this is one of the important elements in maintaining international peace and security and promoting international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences. Nothing in this Code may be construed as impairing or derogating from the provisions of the Charter of the United Nations or actions taken in pursuance thereof. It is understood that special treatment in transfer of technology should be accorded to developing countries in accordance with the provisions in this Code on the subject.

(v) The separate responsibilities of parties to transfer of technology transactions, on the one hand, and those of governments when not acting as parties, on the other, should be clearly distinguished.

(vi) Mutual benefits should accrue to technology supplying and recipient parties in order to maintain and increase the international flow of technology.

(vii) Facilitating and increasing the access to technology, particularly for developing countries, under mutually agreed fair and reasonable terms and conditions, are fundamental elements in the process of technology transfer and development.

(viii) Recognition of the protection of industrial property rights granted under national law.

(ix) Technology supplying parties when operating in an acquiring country should respect the sovereignty and the laws of that country, act with proper regard for that country's declared development policies and priorities and endeavour to contribute substantially to the development of the acquiring country. The freedom of parties to negotiate, conclude and perform agreements for the transfer of technology on mutually acceptable terms and conditions should be based on respect for the foregoing and other principles set forth in this Code.

Chapter 3
National regulation of transfer of technology transactions

3.1. In adopting, and in the light of evolving circumstances making necessary changes in laws, regulations and rules, and policies with respect to transfer of technology transactions, States have the right to adopt measures such as those listed in paragraph 3.4 of this chapter and should act on the basis that these measures should:

(i) Recognize that a close relationship exists between technology flows [and] the conditions under which such flows are admitted and treated;
(ii) Promote a favourable and beneficial climate for the international transfer of technology;
(iii) Take into consideration in an equitable manner the legitimate interests of all parties;
(iv) Encourage and facilitate transfers of technology to take place under mutually agreed, fair and reasonable terms and conditions having regard to the principles and objectives of the Code;
(v) Take into account the differing factors characterizing the transactions such as local conditions, the nature of the technology and the scope of the undertaking;
(vi) Be consistent with their international obligations.

3.2. Measures adopted by States including decisions of competent administrative bodies should be applied fairly, equitably, and on the same basis to all parties in accordance with established procedures of law and the principles and objectives of the Code. Laws and regulations should be clearly defined and publicly and readily available. To the extent appropriate, relevant information regarding decisions of competent administrative bodies should be disseminated.

3.3. Each country adopting legislation on the protection of industrial property should have regard to its national needs of economic and social development, and should ensure an effective protection of industrial property rights granted under its national law and other related rights recognized by its national law.

3.4. Measures on regulation of the flow and effects of transfer of technology, finance and technical aspects of technology transactions and on organizational forms and mechanisms may deal with:

Finance

(a) Currency regulations of foreign exchange payments and remittances;
(b) Conditions of domestic credit and financing facilities;
(c) Transferability of payments;
(d) Tax treatment;
(e) Pricing policies;

Renegotiation

(f) Terms, conditions and objective criteria for the renegotiation of transfer of technology transactions;

Technical aspects

(g) Technology specifications and standards for the various components of the transfer of technology transactions and their payments;
(h) Analysis and evaluation of transfer of technology transactions to assist parties in their negotiations;
(i) Use of local and imported components;

Organizational forms and mechanisms

(j) Evaluation, negotiation, and registration of transfer of technology transactions;
(k) Terms, conditions, duration, of transfer of technology transactions;
(l) Loss of ownership and/or control of domestic acquiring enterprises;
(m) Regulation of foreign collaboration arrangements and agreements that could displace national enterprises from the domestic market;
(n) The definition of fields of activity of foreign enterprises and the choice of channels, mechanisms, organizational forms for the transfer of technology and the prior or subsequent approval of transfer of technology transactions and their registration in these fields;
(o) The determination of the legal effect of transactions which are not in conformity with national laws, regulations and administrative decisions on the transfer of technology;
(p) The establishment or strengthening of national administrative mechanisms for the implementation and application of the Code of Conduct and of national laws, regulations and policies on the transfer of technology;
(q) Promotion of appropriate channels for the international exchange of information and experience in the field of the transfer of technology.

Chapter 4 6/

[The regulation of practices and arrangements involving the transfer of technology] [Restrictive Business Practices]
[Exclusion of political discrimination and Restrictive Business Practices] 7/

Section A: (Chapeau) 8/

Section B: (List of practices) 9/

1. [Exclusive] ** Grant-back provisions 10/

Requiring the acquiring party to transfer or grant back to the supplying party, or to any other enterprise designated by the supplying party, improvements arising from the acquired technology, on an exclusive basis [or]* without offsetting consideration or reciprocal obligations from the supplying party, or when the practice will constitute an abuse of a dominant market position of the supplying party.

2. Challenges to validity 10/

[Unreasonably] ** requiring the acquiring party to refrain from challenging the validity of patents and other types of protection for inventions involved in the transfer or the validity of other such grants claimed or obtained by the supplying party, recognizing that any issues concerning the mutual rights and obligations of the parties following such a challenge will be determined by the appropriate applicable law and the terms of the agreement to the extent consistent with that law. 11/

3. Exclusive dealing

Restrictions on the freedom of the acquiring party to enter into sales, representation or manufacturing agreements relating to similar or competing technologies or products or to obtain competing technology, when such restrictions are not needed for ensuring the achievement of legitimate interests, particularly including securing the confidentiality of the technology transferred or best effort distribution or promotional obligations.

4. Restrictions on research 10/

[Unreasonably]**/*** restricting the acquiring party either in undertaking research and development directed to absorb and adapt the transferred technology to local conditions or in initiating research and development programmes in connection with new products, processes or equipment.

5. Restrictions on use of personnel 10/

[Unreasonably] ** requiring the acquiring party to use personnel designated by the supplying party, except to the extent necessary to ensure the efficient transmission phase for the transfer of technology and putting it to use or thereafter continuing such requirement beyond the time when adequately trained local personnel are available or have been trained; or prejudicing the use of personnel of the technology acquiring country.

6. Price fixing 10/

[Unjustifiably]** imposing regulation of prices to be charged by acquiring parties in the relevant market to which the technology was transferred for products manufactured or services produced using the technology supplied.

7. Restrictions on adaptations 10/

Restrictions which [unreasonably]** prevent the acquiring party from adapting the imported technology to local conditions or introducing innovations in it, or which oblige the acquiring party to introduce unwanted or unnecessary design or specification changes, if the acquiring party makes adaptations on his own responsibility and without using the technology supplying party's name, trade or service marks or trade names, and except to the extent that this adaptation unsuitably affects those products, or the process for their manufacture, to be supplied to the supplying party, his designates, or his other licensees, or to be used as a component or spare part in a product to be supplied to his customers.

8. Exclusive sales or representation agreements

Requiring the acquiring party to grant exclusive sales or representation rights to the supplying party or any person designated by the supplying party, except as to subcontracting or manufacturing arrangements wherein the parties have agreed that all or part of the production under the technology transfer arrangement will be distributed by the supplying party or any person designated by him.

9. Tying arrangements 10/

[Unduly]** imposing acceptance of additional technology, future inventions and improvements, goods or services not wanted by the acquiring party or [unduly]** restricting sources of technology, goods or services, as a condition for obtaining the technology required when not required to maintain the quality of the product or service when the supplier's trade or service mark or other identifying item is used by the acquiring party, or to fulfil a specific performance obligation which has been guaranteed, provided further that adequate specification of the ingredients is not feasible or would involve the disclosure of additional technology not covered by the arrangement.

10. Export restrictions 8/

11. Patent pool or cross-licensing agreements and other arrangements

Restrictions on territories, quantities, prices, customers or markets arising out of patent pool or cross-licensing agreements or other international transfer of technology interchange arrangements among technology suppliers which unduly limit access to new technological developments or which would result in an abusive domination of an industry or market with adverse effects on the transfer of technology, except for those restrictions appropriate and ancillary to co-operative arrangements such as co-operative research arrangements.

12. Restrictions on publicity 10/

Restrictions [unreasonably]** regulating the advertising or publicity by the acquiring party except where restrictions of such publicity may be required to prevent injury to the supplying party's goodwill or reputation where the advertising or publicity makes reference to the supplying party's name, trade or service marks, trade names or other identifying items, or for legitimate reasons of avoiding product liability when the supplying party may be subject to such

liability, or where appropriate for safety purposes or to protect consumers, or when needed to secure the confidentiality of the technology transferred.

13. Payments and other obligations after expiration of industrial property rights

Requiring payments or imposing other obligations for continuing the use of industrial property rights which have been invalidated, cancelled or have expired recognizing that any other issue, including other payment obligations for technology, shall be dealt with by the appropriate applicable law and the terms of the agreement to the extent consistent with that law. 11/

14. Restrictions after expiration of arrangement. 8/

Chapter 5
Responsibilities and Obligations of Parties

Common provision on negotiating as well as contractual phase

5.1. When negotiating and concluding a technology transfer agreement, the parties should, in accordance with this chapter, be responsive to the economic and social development objectives of the respective countries of the parties and particularly of the technology acquiring country, and when negotiating, concluding and performing a technology transfer agreement, the parties should observe fair and honest business practices and take into account the specific circumstances of the individual case and recognition should be given to certain circumstances, mainly the stage of development of technology, the economic and technical capabilities of the parties, the nature and type of the transaction such as any ongoing or continuous flow of technology between the parties.

Negotiating phase

5.2. In being responsive to the economic and social development objectives mentioned in this chapter each party should take into account the other's request to include in the agreements, to the extent technically and commercially practicable and for adequate consideration, when appropriate, such as the case in which the supplying party incurs additional costs or efforts, items clearly related to the official economic and social development objectives of the country of the requesting party as enunciated by its government. Such items include, *inter alia*, where applicable:

(a) Use of locally available resources

(i) specific provisions for the use for the tasks concerned of adequately trained or otherwise suitable local personnel to be designated and subsequently made available by the potential technology recipient including managerial personnel, as well as for the training of suitably skilled local personnel to be designated and subsequently made available by the potential technology recipient;

(ii) specific provisions for the use of locally available materials, technologies, technical skills, consultancy and engineering services and other resources to be indicated and subsequently made available by the potential technology recipient;

(b) Rendering of technical services

Specific provisions for the rendering of technical services in the introduction and operation of the technology to be transferred;

(c) Unpackaging

Upon request of the potential acquiring party, the potential supplying party should, to the extent practicable, make adequate arrangements as regards unpackaging in terms of information concerning the various elements of the technology to be transferred, such as that required for technical, institutional and financial evaluation of the potential supplying party's offer.

5.3. Business negotiating practices

When negotiating a technology transfer agreement, the parties should observe fair and honest business practices and therefore:

(a) Both potential parties

(i) Fair and reasonable terms and conditions

(i) Should negotiate in good faith with the aim of reaching, in a timely manner, an agreement containing fair and reasonable commercial terms and conditions, including agreement on payments such as licence fees, royalties and other considerations;
(ii) The price or consideration to be charged should be fair and reasonable, it should be clearly indicated and, to the extent practicable, specified in such a manner that the acquiring party would be able to appreciate its reasonableness and fairness by comparing it to the price or consideration for other comparable technologies transferred under similar conditions, which may be known to him;
(ii) Relevant information

Should consider requests to inform each other, to the extent appropriate, about their prior arrangements which may affect the contemplated technology transfer;

(iii) Confidential information

Should keep secret, in accordance with any obligation, either legal or contractual, all confidential information received from the other party and make use of the confidential information received from a potential party only for the purpose of evaluating this party's offer or request for other purposes agreed upon by the parties;

(iv) Termination of negotiations

May cease negotiations if, during the negotiations, either party determines that a satisfactory agreement cannot be reached;

(b) The potential acquiring party

Relevant information

Should provide the potential technology supplier in a timely manner with the available specific information concerning the technical conditions and official economic and social development objectives as well as legislation of the acquiring country relevant to the particular transfer and use of the technology under negotiation as far as such information is needed for the supplying party's responsiveness under this chapter;

(c) The potential supplying party

Relevant information

(i) Should disclose, in a timely manner, to the potential technology acquiring party any reason actually known to him, on account of which the technology to be supplied, when used in accordance with the terms and conditions of the proposed agreement, would not meet particular health, safety and environmental requirements in the technology acquiring country, already known to him as being relevant in the specific case or which have been specifically drawn to his attention, as well as any serious health, safety and environmental risks known by the supplier associated with the use of the technology and of products to be produced by it;

(ii) Should disclose to the potential technology acquiring party, to the actual extent known to him, any limitation, including any pending official procedures or litigation which adversely concerns, in a direct manner, the existence or validity of the rights to be transferred, on his entitlement to grant the rights or render the assistance and services specified in the proposed agreement;

Provision of accessories, spare parts and components

(iii) Should to the extent feasible, take into account the request of the acquiring party to provide it for a period to be specified with accessories, spare parts and components produced by the supplying party and necessary for using the technology to be transferred, particularly where alternative sources are unavailable.

Contractual phase - Chapeau

5.4. The technology transfer agreement should, in accordance with 5.1., provide for mutually acceptable contractual obligations, including those relating to payments and, where appropriate, inter alia, the following:

(i) Access to improvements

Access for a specified period or for the lifetime of the agreement to improvements to the technology transferred under the agreement;

(ii) Confidentiality 12/
(iii) Dispute settlement and applicable law 12/
(iv) Description of the technology

The technology supplier's guarantee that the technology meets the description contained in the technology transfer agreement;

(v) Suitability for use

The technology supplier's guarantee that the technology, if used in accordance with the supplier's specific instructions given pursuant to the agreement, is suitable for manufacturing of goods or production of services as agreed upon by the parties and stipulated in the agreement;

(vi) Rights to the technology transferred

The technology supplier's representation that on the date of the signing of the agreement, it is, to the best of its knowledge, not aware of third parties' valid patent rights or similar protection for inventions which would be infringed by the use of the technology when used as specified in the agreement;

(vii) Quality levels and goodwill

The technology recipient's commitment to observe quality levels agreed upon in cases where the agreement includes the use of the supplier's trade marks, trade names or similar identification of goodwill, and both parties' commitment to avoid taking actions primarily or deliberately intended to injure the other's goodwill or reputation;

(viii) Performance guarantees

Specification to technical performance parameters which the supplying party has agreed to guarantee, including specification of requirements for the achievement of such parameters, details of the manner of determining whether the performance has been met and the consequences of failure to meet that performance;

(ix) Transmission of documentation

The supplying party's commitment that relevant technical documentation and other data required from him for a particular purpose defined in terms directly specified in the agreement will be transferred in a timely manner and as correctly and completely for such purpose as agreed upon;

(x) Training of personnel and provision of accessories, spare parts and components

Where negotiations under paragraphs 5.2 (a) (i) and 5.5 (c) (iii) have taken place, suitable provisions for training of personnel and supply of accessories, spare parts and components would be made, consistent with the results of the negotiations;

(xi) Liability

Disposition concerning liability for the non-fulfilment by either party of its responsibilities under the technology transfer agreement including questions of loss, damage or injury.

Chapter 6
Special treatment for developing countries

6.1. Taking into consideration the needs and problems of developing countries, particularly of the least developed countries, governments of developed countries, directly or through appropriate international organizations, in order to facilitate and encourage the initiation and strengthening of the scientific and technological capabilities of developing countries so as to assist and co-operate with them in their efforts to fulfil their economic and social objectives, should take adequate specific measures, inter alia, to:

(i) facilitate access by developing countries to available information regarding the availabilities, description, location and, as far as possible, approximate cost of technologies which might help those countries to attain their economic and social development objectives;
(ii) give developing countries the freest and fullest possible access to technologies whose transfer is not subject to private decisions; 13/
(iii) facilitate access by developing countries, to the extent practicable, to technologies whose transfer is subject to private decisions; 13/
(iv) assist and co-operate with developing countries in the assessment and adaptation of existing technologies and in the development of national technologies by facilitating access, as far as possible, to available scientific and industrial research data;
(v) co-operate in the development of scientific and technological resources in developing countries, including the creation and growth of innovative capacities;
(vi) assist developing countries in strengthening their technological capacity, especially in the basic sectors of their national economy, through creation of and support for laboratories, experimental facilities and institutes for training and research;
(vii) co-operate in the establishment or strengthening of national, regional and/or international institutions, including technology transfer centres, to help developing countries to develop and obtain the technology and skills required for the establishment, development and enhancement of their technological capabilities including the design, construction and operation of plants;
(viii) encourage the adaptation of research and development, engineering and design to conditions and factor endowments prevailing in developing countries;
(ix) co-operate in measures leading to greater utilization of the managerial, engineering, design and technical experience of the personnel and the institutions of developing countries in specific economic and other development projects undertaken at the bilateral and multilateral levels;
(x) encourage the training of personnel from developing countries.

6.2.Governments of developed countries, directly or through appropriate international organizations, in assisting in the promotion of transfer of technology to developing countries - particularly to the least developed countries - should, as a part of programmes for development assistance and co-operation, take into account requests from developing countries to:

(i) contribute to the development of national technologies in developing countries by providing experts under development assistance and research exchange programmes;
(ii) provide training for research, engineering, design and other personnel from developing countries engaged in the development of national technologies or in the adaptation and use of technologies transferred;
(iii) provide assistance and co-operation in the development and administration of laws and regulations with a view to facilitating the transfer of technology;
(iv) provide support for projects in developing countries for the development and adaptation of new and existing technologies suitable to the particular needs of developing countries;
(v) grant credits on terms more favourable than the usual commercial terms for financing the acquisition of capital and intermediate goods in the context of approved development projects involving transfer of technology transactions so as to reduce the cost of projects and improve the quality of technology received by the developing countries;
(vi) provide assistance and co-operation in the development and administration of laws and regulations designed to avoid health, safety and environmental risks associated with technology or the products produced by it.

6.3. Governments of developed countries should take measures in accordance with national policies, laws and regulations to encourage and to endeavour to give incentive to enterprises and institutions in their countries, either individually or in collaboration with enterprises and institutions in developing countries, particularly those in the least developed countries, to make special efforts, *inter alia,* to:

(i) assist in the development of technological capabilities of the enterprises in developing countries, including special training as required by the recipients;
(ii) undertake the development of technology appropriate to the needs of developing countries;
(iii) undertake R and D activity in developing countries of interest to such countries, as well as to improve co-operation between enterprises and scientific and technological institutions of developed and developing countries;
(iv) assist in projects by enterprises and institutions in developing countries for the development and adaptation of new and existing technologies suitable to the particular needs and conditions of developing countries.

6.4. The special treatment accorded to developing countries should be responsive to their economic and social objectives vis-a-vis their relative stage of economic and social development and with particular attention to the special problems and conditions of the least developed countries.

Chapter 7
International collaboration

7.1. The States recognize the need for appropriate international collaboration among governments, intergovernmental bodies, and organs and agencies of the United Nations system, including the international institutional machinery provided for in this Code, with a view to facilitating an expanded international flow of technology for strengthening the technological capabilities of all countries, taking into account the objectives and principles of this Code, and to promoting the effective implementation of its provisions.

7.2. Such international collaboration between governments at the bilateral or multilateral, subregional, regional or interregional levels may include, *inter alia*, the following measures:

(i) Exchange of available information on the availability and description of technologies and technological alternatives;
(ii) Exchange of available information on experience in seeking solutions to problems relating to the transfer of technology, particularly restrictive [business]** practices in the transfer of technology; 14/
(iii) Exchange of information on development of national legislation with respect to the transfer of technology;
(iv) Promotion of the conclusion of international agreements which should provide equitable treatment for both technology supplying and recipient parties and governments;
(v) Consultations which may lead to greater harmonization, where appropriate, of national legislation and policies with respect to the transfer of technology;
(vi) Promotion, where appropriate, of common programmes for searching for, acquiring and disseminating technologies;
(vii) Promotion of programmes for the adaptation and development of technology in the context of development objectives;
(viii) Promotion of the development of scientific and technological resources and capabilities stimulating the development of indigenous technologies;
(ix) Action through international agreements to avoid, as far as possible, imposition of double taxation on earnings and payments arising out of transfer of technology transactions.

Chapter 8
International Institutional Machinery

8.1. Institutional arrangements

(a) 15/

(b) 15/

(c) States which have accepted the Code of Conduct on the Transfer of Technology should take appropriate steps at the national level to meet their commitment to the Code.

8.2 Functions of the International Institutional Machinery

8.2.1. The International Institutional Machinery shall have the following functions:

(a) To provide a forum and modalities for consultations, discussion, and exchange of views between States on matters related to the Code, in particular its application and its greater harmonization, and the experience gained in its operations;
(b) To undertake and disseminate periodically studies and research on transfer of technology related to the provisions of the code, with a view to increasing exchange of experience and giving greater effect to the application and implementation of the Code;
(c) To invite and consider relevant studies, documentation and reports from within the United Nations system, particularly from UNIDO and WIPO;
(d) To study matters relating to the Code and which might be characterized by data covering transfer of technology transactions and other relevant information obtained upon request addressed to all States;
(e) To collect and disseminate information on matters relating to the Code, to the over-all attainment of its goals and to the appropriate steps States have taken at the national level to promote an effective Code, including its objective and principles;
(f) To make appropriate reports and recommendations to States on matters within its competence including the application and implementation of the Code;
(g) To organize symposia, workshops and similar meetings concerning the application of the provisions of the Code, subject to the approval of the Trade and Development Board where financing from the regular budget is involved;
(h) To submit reports at least once a year on its work to the Trade and Development Board.

8.2.2. In the performance of its functions, the International Institutional Machinery may not act like a tribunal or otherwise pass judgement on the activities or conduct of individual Governments or of individual parties in connection with a specific transfer of technology transaction. The International Institutional Machinery should avoid becoming involved when parties in a specific transfer of technology transaction are in dispute.

8.2.3.The International Institutional Machinery shall establish such procedures as may be necessary to deal with issues related to confidentiality.

8.3. Review procedure 15/

8.4. Secretariat

The secretariat for the International Institutional Machinery shall be the UNCTAD secretariat. At the request of the International Institutional Machinery the secretariat shall submit relevant studies, documentation and other information to the International Institutional Machinery. It shall consult with and render assistance, by the relevant services, to States, particularly the developing countries, at their request, in the application of the Code at the national level, to the extent that resources are available.

8.5 General provisions 15/

Chapter 9
Applicable law and settlement of disputes 16/

Endnotes

1/ For texts under consideration, see appendices A and F.

2/ Group 2 accepts inclusion of this sentence subject to agreement to be reached on qualifications relating to the application of the Code to the relations of these entities in relevant parts of the Code.

3/ For texts under consideration, see appendices A and C.

4/ Text under consideration. See proposal in appendix C.

5/ Text under consideration. See also appendix A.

6/ In view of continuing negotiations on the chapter, no attempt has been made to number the provisions of this chapter consistently with the other chapters.

7/ Title of Chapter 4 under consideration.

8/ For texts under consideration, see appendices A and D.

9/ With regard to practices 15 to 20, see appendix A.l for text of agreed statement for inclusion in the report of the Conference, and for texts under consideration see appendix D.
10/ Text under consideration. See appendix A.

11/ The spokesman for the regional groups noted that their acceptance of agreed language which makes reference to the term "applicable law" is conditional upon acceptable resolution of differences in the group texts concerning applicable law and national regulation of this Code.

l2/ For text under consideration, see appendix A.

13/ The term "private decision" in the particular context of this chapter should be officially interpreted in the light of the legal order of the respective country.

14/ Text under consideration; see also appendix A.

15/ For texts under consideration, see appendices A and E.

16/ For texts under consideration, see appendices A and F.

* * *

2. Draft United Nations Code of Conduct on Transnational Corporations*

PREAMBLE AND OBJECTIVES** a/

DEFINITIONS AND SCOPE OF APPLICATION

1. (a) [The term "transnational corporations" as used in this Code means an enterprise, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centres, in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others, and, in particular, to share knowledge, resources and responsibilities with the others.]

[The term "transnational corporation" as used in this Code means an enterprise whether of public, private or mixed ownership, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centres, in which the entities are so linked, by ownership or otherwise, that one or more of them [may be able to] exercise a significant influence over the activities of others, and, in particular, to share knowledge, resources and responsibilities with the others.]

(b) The term "entities" in the Code refers to both parent entities - that is, entities which are the main source of influence over others - and other entities, unless otherwise specified in the Code.

(c) The term "transnational corporation" in the Code refers to the enterprise as a whole or its various entities.

(d) The term "home country" means the country in which the parent entity is located. The term "host country" means a country in which an entity other than the parent entity is located.

(e) The term "country in which a transnational corporation operates" refers to a home or host country in which an entity of a transnational corporation conducts operations.

* Commission on Transnational Corporations, Report on the Special Session (7-18 March and 9-21 May 1983) *Official Records of the Economic and Social Council*, 1983, Supplement No. 7 (E/1983/17/Rev. 1), Annex II. This text of the Code was also reproduced in United Nations Centre on Transnational Corporations (1986). *The United Nations Code of Conduct on Transnational Corporations*, Current Studies, Series A (New York: United Nations) United Nations publication sales No. E.86.II.A.15, (ST/CTC/SER.A/4), Annex I, pp.28-45 [Note added by the editor].

** No final decision regarding the use and contents of headings and subheadings appearing in the text has yet been taken.

2. [The Code is universally applicable in, and to this end is open to adoption by, all States.]

[The Code is universally applicable in [home and host countries of transnational corporations] [as defined in paragraph 1 (a)], and to this end is open to adoption by, all States [regardless of their political and economic systems and their level of development] .]

[The Code is open to adoption by all States and is applicable in all States where an entity of a transnational corporation conducts operations.]

[The Code is universally applicable to all States regardless of their political and economic systems and their level of development.]

3. [This Code applies to all enterprises as defined in paragraph 1 (a) above.]

[To be placed in paragraph 1 (a).]

[4. The provisions of the Code addressed to transnational corporations reflect good practice for all enterprises. They are not intended to introduce differences of conduct between transnational corporations and domestic enterprises. Wherever the provisions are relevant to both, transnational corporations and domestic enterprises should be subject to the same expectations in regard to their conduct.]
[to be deleted][*]

[5. Any reference in this Code to States, countries or Governments also includes regional groupings of States, to the extent that the provisions of this Code relate to matters within these groupings' own competence, with respect to such competence.]
[…]

Transfer of technology

36. [Transnational corporations shall conform to the transfer of technology laws and regulations of the countries in which they operate. They shall co-operate with the competent authorities of those countries in assessing the impact of international transfers of technology in their economies and consult with them regarding the various technological options which might help those countries, particularly developing countries, to attain their economic and social development.

Transnational corporations in their transfer of technology transactions, including intra-corporate transactions, shall avoid practices which adversely affect the international flow of technology, or otherwise hinder the economic and technological development of countries, particularly developing countries.

Transnational corporations shall contribute to the strengthening of the scientific and technological capacities of developing countries, in accordance with the science and technology policies and priorities of those countries. Transnational corporations shall undertake substantial research and development activities in developing countries and make full use of local resources and personnel in this process.]

[*]On the grounds, *inter alia*, that the text within the first pair of brackets goes beyond the mandate of the Intergovernmental Working Group on a Code of Conduct.

[For the purposes of this Code the relevant provisions of the International Code of Conduct on the Transfer of Technology adopted by the General Assembly in its resolution _____ of _____ shall/should apply in the field of transfer of technology.][*]

[…]

Environmental protection

41. Transnational corporations shall/should carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate and with due regard to relevant international standards. Transnational corporations shall/should, in performing their activities, take steps to protect the environment and where damaged to [restore it to the extent appropriate and feasible] [rehabilitate it] and should make efforts to develop and apply adequate technologies for this purpose.

42. Transnational corporations shall/should, in respect of the products, processes and services they have introduced or propose to introduce in any country, supply to the competent authorities of that country on request or on a regular basis, as specified by these authorities, all relevant information concerning:

Characteristics of these products, processes and other activities including experimental uses and related aspects which may harm the environment and the measures and costs necessary to avoid or at least to mitigate their harmful effects;

Prohibitions, restrictions, warnings and other public regulatory measures imposed in other countries on grounds of protection of the environment on these products, processes and services.

43. Transnational corporations shall/should be responsive to requests from Governments of the countries in which they operate and be prepared where appropriate to co-operate with international organizations in their efforts to develop and promote national and international standards for the protection of the environment.

Notes

a/ No drafting was done on the Preamble and Objectives of the Code. However, the following text was drafted during the discussion on other parts of the Code and the decision was taken to place it in one of the substantive introductory parts of the Code:

[*]To be included in one of the substantive introductory parts of the Code.

"For the purposes of this Code, the principles set out in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office, should apply in the field of employment, training, conditions of work and life and industrial relations."
(No decision has yet been taken on the exact location of this paragraph.)

b/ Some delegations accepted paragraphs 26, 30, 31 and 32 on balance of payments and financing on an ad referendum basis.

c/ The placement of this paragraph has not yet been decided.

* * *

B. Non Governmental Instruments

1. Pacific Basin Charter on International Investments (Pacific Basin Economic Council)*

Technology

Governments and international investors should stimulate the flow of technology and sound managerial concepts and practices across international boundaries which will serve to improve the technical and managerial capabilities of recipient economies.

Governments should recognize the rights of international investors to receive reasonable payment covering the use of their proprietary technology.

* * *

* Pacific Basin Charter (Pacific Basin Economic Council, 1995):
UNCTAD (1996). *International Investment Instruments: A Compendium* - Volume III - Regional Integration, Bilateral and Non-governmental Instruments, (Geneva: UNCTAD), Document No. UNCTAD/DTCI/30 (Vol.III) / United Nations publication sales No. E.96.II.A.11; pp. 375-379.

2. Charter of Trade Union Demands for the Legislative Control of Multinational Companies*

…

Trade union proposals for action

(vi) Transfer of technology and the role of multinationals in development

36. Apologists for the multinational companies are wont to harp on the benefits by way of industrialisation they have brought, especially to the developing countries, thanks to the spread of modern technology of which they have a virtual monopoly. What is not usually mentioned is the tremendous cost this has involved, especially to developing countries which can ill afford to pay the exorbitant sums demanded as royalties and patent rights.

37. The instrument whereby patent holders in the rich countries have established their right to exact their pound of flesh from the poor countries is the Paris Convention for the Protection of Industrial Property of 1883. This lays down the principle of temporary monopoly of production and sale to the license owner or patentee of an industrial process. Most developing countries have refused to sign this convention, but are nevertheless obliged to comply with it, faced as they are with the enormous power of the multinational license holders. They rightly regard it as an instrument of exploitation whereby they are expected to strengthen the position of foreign firms on their own territories through the payment or royalties unilaterally fixed by the companies themselves.

38. There is no doubt that the Paris Convention, with its sanctification of technological monopoly, has been instrumental in promoting a tremendous concentration of economic power in the hands of a few powerful companies. The international trade union movement has consequently called for the drastic revision of the Paris Convention and its replacement by a system of fees to be fixed by negotiation or arbitration.

39. Even where the transfer of technology takes place within the company itself and involves no direct charge on a developing country, this is not necessarily an unmixed blessing. It usually means that an industrial process has been foisted willy-nilly on that country without regard to its real development needs or its national planning objectives. Furthermore, it generally does little to raise the level of technological knowledge in the country, but on the contrary reinforces its economic and technological dependence on monopoly capital.

40. We consequently recommend to the attention of the United Nations and intergovernmental regional bodies the conclusions of the Group of Twenty regarding technology in their report "The Impact of Multinational Corporations on Development and International Relations". (See Appendix V).

41. We also recommend the common regulations evolved by the Andean Group of countries, which seek to render null and void contracts containing clauses which permit the supplier to interfere directly or indirectly in the management of the purchasing company, establish the obligation to transfer to the supplier improvements developed by the purchasing

* Charter of Trade Union Demands for the Legislative Control of Multinational Companies (1975) International Confederation of Free Trade Unions (1975). "Charter of Trade Union Demands for the Control of Multinational Companies adopted by the Eleventh World Congress", *Multinational Charter*, (Brussels: ICFTU), pp. 17-67

company, establish the obligation to purchase from certain suppliers only, or limit the volume of production. (See Appendix VI).

42. We furthermore recommend, as one possible and obviously socially useful alternative to the transfer of technology by multinationals, the studies which the International Cooperative Alliance is pursuing on the possibility of joint cooperative productive investment in developing countries for the benefit of the workers and peoples concerned.

Appendix II

Social Obligations of Multinational Companies

Regarding employment and industrial relations the following obligations should be imposed on the multinational companies:

(n) multinational companies operating in a developing country shall pay wages and fringe benefits which give their employees a fair share of the fruits of the higher productivity resulting from their superior technology and managerial skills.

Appendix V

RECOMMENDATIONS OF THE UNITED NATIONS' GROUP OF TWENTY REGARDING TECHNOLOGY[24]

(1) **The Group recommends** that before a multinational corporation is permitted to introduce a particular product into the domestic market, the host Government should carefully evaluate its suitability for meeting local needs.

(2) **The Group recommends** that the machinery for screening and handling investment proposals by multinational corporations, recommended earlier, should also be responsible for evaluating the appropriateness of the technology, and that its capacity to do so should, where advisable, be strengthened by the provision of information and advisory services by international institutions.

(3) **The Group recommends** that host countries should require multinational corporations to make a reasonable contribution towards product and process innovation, of the kind most suited to national or regional needs, and should further encourage them to undertake such research through their affiliates. These affiliates should also be permitted to export their technology to other parts of the organisation at appropriate prices.

(4) **The Group draws attention** to the work of the Economic and Social Council and UNCTAD on technology (including decision 104 [XIII] of the Trade and Development Board on exploring the possibility of establishing a code of conduct for the transfer of technology) **and recommends** that international organisations should engage in an effort to

[24] "The Impact of Multinational Corporations on Development and International Relations", United Nations, New York (1974). [In the original text, this note appears as an asterisk]

revise the patent system and to evolve an over-all regime under which the cost of technology provided by multinational corporations to developing countries could be reduced.

(5) **The Group supports** the establishment of a world patents (technology) bank to which any public institution may donate for use in developing countries patents which it owns or purchases for this purpose.

(6) **The Group recommends** that host countries should explore alternative ways of importing technology other than by foreign direct investment, and should acquire the capacity to determine which technology would best suit their needs. **It also recommends** that international agencies should help them in this task.

Appendix VI

COMMON REGULATIONS OF THE ANDEAN GROUP OF COUNTRIES GOVERNING THE IMPORTATION OF TECHNOLOGY

The following common regulations governing the importation of technology were contained in the Cartagena Treaty adopted in 1968 by Bolivia, Chile, Colombia, Ecuador and Peru and later adhered to by Venezuela. They could well serve as guidelines for other developing countries, although further study by the United Nations Information and Research Centre might eventually add to them.

(i) Any contract regarding the importation of technology or the use of patents and trademarks shall be reviewed and submitted to the approval of the appropriate agency of the respective member country, which shall evaluate the effective contribution of the imported technology by means of an appraisal of its possible profit generation, the price of the goods embodying technology or other specific means of measuring the effect of the imported technology.

(ii) Contracts for importing technology shall at least contain some clauses regarding the following:

(a) Identification of the manner in which the technology to be imported shall be transferred;

(b) Contractual value for each of the elements involved in the transfer of technology expressed in a similar way as that used in the registration of foreign direct investment; and

(c) Determination of the time period during which the contract shall be in force.

(iii) The member countries shall not authorise contracts for the transfer of foreign technology or use of parents containing:

(a) Clauses stipulating that the provision of technology carries with it an obligation on the part of the receiving country or enterprise to purchase capital goods, intermediate products, raw materials or other technologies from some given sources or to make permanent use of staff appointed by the firm supplying the technology. In exceptional cases, the receiving country may accept clauses of this nature for the purchase of capital goods, intermediate products or raw materials

provided that their price falls within the levels prevailing in the international market;

(b) Clauses stipulating that the technology-supplying firm reserves the right of establishing the sale or resale prices of the products manufactured on the basis of the respective technology;

(c) Clauses stipulating restrictions as to the volume and structure of production;

(d) Clauses prohibiting the use of competitive technologies;

(e) Clauses stipulating a total or partial purchase option in favour of the supplier of technology;

(f) Clauses committing the buyer of technology to transfer to the supplier those inventions or improvements obtained through the use of the said technology;

(g) Clauses stipulating payment of royalties for unused patents to the holders of said patents; and

(h) Other clauses having equivalent effects.

With the exception of special cases, duly verified by the appropriate agency of the receiving country, clauses prohibiting or in any way limiting the export of the products manufactured on the basis of the respective technology will not be accepted.

(v) Intangible technological contributions will have a right to payment of royalties, with the prior authorisation of the appropriate national agency, but may not be registered as capital contributions.When these contributions are made to a foreign enterprise by its parent company or some other affiliate of the same enterprise, payment of royalties shall not be authorised nor will any deduction be accepted for this reason for tax purposes.

(v) National authorities shall undertake a continuous and systematic identification of the technologies available in the world market for the different industrial fields, for the purpose of having at their disposal the most favourable and convenient alternative solutions for their economic conditions.

* * *

C. Expert Meeting on International Arrangements for Transfer of Technology

Outcome of the Expert Meeting*

1. The Expert Meeting on International Arrangements for Transfer of Technology examined a range of issues for consideration by the Commission on Investment, Technology and Related Financial Issues pursuant to paragraphs 117 and 128 of the Bangkok Plan of Action (TD/386)[1]/. Experts made presentations and exchanged views on experiences and best practices at the international and national levels.

2. Experts noted that, in the knowledge-based global economy, technology plays an ever-important role in economic development. The concerns of the international community with respect to enhancing the transfer of technology to developing countries, in particular to the least developed countries, as well as their technological capabilities, are reflected in several dozen international instruments. These instruments express the willingness of development partners to cooperate multilaterally. There has been some success in implementation, but more needs to be done. The availability of information on arrangements for transfer of technology is an essential requirement for sustained multilateral cooperation. In this connection, the *Compendium* on transfer of technology-related provisions[2]/ is a welcome contribution and should be continuously updated, as necessary, and widely disseminated, including through electronic media.

3. Experts also noted that most technology-related provisions are of a "best-efforts" nature. Governments, as well as civil society and the private sector, have an important role to play in the implementation of commitments, *inter alia* through public and private partnerships. In this connection, experts emphasized the importance of adequate protection of intellectual property in providing incentives for investment and transfer of technology in all countries, including in developing countries, taking into account the interests of producers, users and consumers.

4. Experts examined a number of best practices that can contribute to generating favourable conditions and opportunities for transfer of technology and capacity building. Some of these practices include the following:

(a) International instruments with built-in implementation mechanisms, including financial provisions and monitoring arrangements, have a promising implementation record and should be emulated. These instruments are relatively few and mainly for purposes of the public good, such as environmental protection. Nevertheless they can serve as a model in other areas such as infrastructure, health, nutrition and telecommunication;

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* UNCTAD (2001), Commission on Investment, Technology and Related Financial Issues, "International Arrangements for Transfer of Technology, Outcome of the Expert Meeting", Document No.TD/B/COM.2/EM.9/L.1, 4 July.

[1] Paragraph 117: "UNCTAD should analyse all aspects of existing international agreements relevant to transfer of technology". Paragraph 128: "In the area of transfer of technology, UNCTAD should examine and disseminate widely information on best practices for access to technology".

[2]/ Compendium of International Arrangements on Transfer of Technology: Selected Instruments (UNCTAD/ITE/IPC/Misc.5).

(b) Ensuring the access, in particular of developing countries, to technological information, including information on state-of-the-art technologies on a competitive basis and on fair and equitable terms and conditions, in addition to information available from the public sources;

(c) Taking measures to prevent anticompetitive practices by technology rights holders or the resort to practices which unduly impede the transfer and dissemination of technology. Control of such practices is quite common in developed countries, but there is a lack of legislative measures in this regard in many developing countries. In particular, the development of relevant legislation at either the national or regional level is considered to be a promising option;

(d) Taking into account the possible short and medium-term costs, local working requirements, if applied in a manner that is consistent with the TRIPS Agreement and the Paris Convention, may be one way of enhancing transfer of technology;

(e) Making the TRIPS Agreement more conducive to transfer of technology, in accordance with its Articles 7, 8 and 40, including by reviewing its impact on transfer of technology and capacity building;

(f) Setting up of interministerial coordination committees at the national/regional level with regard to the interface between commitments in the TRIPS Agreement and national implementation requirements with a view to adjusting the TRIPS standards to local innovation needs and to favouring their pro-competitive implementation. UNCTAD should assist interested countries in establishing such committees by undertaking a needs assessment in the context of the ongoing programme of science, technology and innovation policy reviews;

(g) Establishing a special trust fund, based on successful models, to promote research and development in developing countries and other activities in the area of technology with a view to assisting developing countries in benefiting from their various international commitments;

(h) Designing measures and specific incentives for home-country enterprises, including fiscal and other incentives, to promote transfer of technology, especially through FDI in developing countries. In this connection, the monitoring of implementation of the commitments in Article 66.2 of the TRIPS Agreement could contribute to building a sound and viable technological base in LDCs. UNCTAD should compile an illustrative list of home-country measures that might fulfil the requirements of Article 66.2;

(i) Supporting capacity-building, in particular in LDCs, through specific projects and programmes and by establishing a scientific and technological infrastructure on a cooperative basis for both the public and private research facilities so to enable them to assess, adopt, manage, apply and improve technologies;

(j) Creating a hospitable domestic regulatory environment for foreign investment, along with intellectual property protection, encourages access to the newest technology. It has been observed that the transfer of technology, is often most successful when accomplished by means of investment, specially by FDI. In this connection, technical cooperation should focus on technological capacity

building with a view to enabling beneficiary countries to use intellectual property rights properly in ways that advance their national systems of innovation;

(k) Supporting transfer of technology and capacity building for enhancing the use of electronic commerce in developing countries, in particular by their small and medium sized enterprises, including enhancing the use of information and technologies in the public domain;

The provision by host countries of an enabling environment for transfer of technology, taking into account the following considerations:

- Vocational training and recruitment of technical staff;
- Relationships with local public or private research centres and consultancy firms;
- Joint efforts by enterprises and Governments;
- Encouraging capacity building for assessing, adopting, managing, and applying technologies through *inter alia*: human resources development, strengthening institutional capacities for research and development and programme implementation, assessments of technology needs, and long-term technological partnerships between holders of technologies and potential local users.

5. UNCTAD should provide assistance to developing countries, in particular least developed countries, to strengthen their capacity for discussing and for negotiating technology transfer provisions in international instruments. UNCTAD should further explore ways and means for effective implementation of international commitments in the area of transfer of technology and capacity building.

* * *

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Compendium of International Arrangements on Transfer of Technology

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