

ANNEX 5

Provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits (1989) referred to in the TRIPS Agreement*

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* [WTO Secretariat note] The provisions reproduced herein are referred to in Article 35 and in other provisions of the TRIPS Agreement.

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**Provisions of the Treaty on Intellectual Property
in Respect of Integrated Circuits (1989)
referred to in the TRIPS Agreement***

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Article 2

Definitions

For the purposes of this Treaty:

- (i) "integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function,
- (ii) "layout-design (topography)" means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture,
- (iii) "holder of the right" means the natural person who, or the legal entity which, according to the applicable law, is to be regarded as the beneficiary of the protection referred to in Article 6,
- (iv) "protected layout-design (topography)" means a layout-design (topography) in respect of which the conditions of protection referred to in this Treaty are fulfilled,
- (v) "Contracting Party" means a State, or an Intergovernmental Organization meeting the requirements of item (x), party to this Treaty,
- (vi) "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an Intergovernmental Organization, the territory in which the constituting treaty of that Intergovernmental Organization applies,
- (vii) "Union" means the Union referred to in Article 1,
- (viii) "Assembly" means the Assembly referred to in Article 9,
- (ix) "Director General" means the Director General of the World Intellectual Property Organization,
- (x) "Intergovernmental Organization" means an organization constituted by, and composed of, States of any region of the world, which has

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competence in respect of matters governed by this Treaty, has its own legislation providing for intellectual property protection in respect of layout-designs (topographies) and binding on all its member States, and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Treaty.

Article 3

The Subject Matter of the Treaty

(1) *[Obligation to Protect Layout-Designs (Topographies)]*

(a) Each Contracting Party shall have the obligation to secure, throughout its territory, intellectual property protection in respect of layout-designs (topographies) in accordance with this Treaty. It shall, in particular, secure adequate measures to ensure the prevention of acts considered unlawful under Article 6 and appropriate legal remedies where such acts have been committed.

(b) The right of the holder of the right in respect of an integrated circuit applies whether or not the integrated circuit is incorporated in an article.

(c) Notwithstanding Article 2(i), any Contracting Party whose law limits the protection of layout-designs (topographies) to layout-designs (topographies) of semiconductor integrated circuits shall be free to apply that limitation as long as its law contains such limitation.

(2) *[Requirement of Originality]*

(a) The obligation referred to in paragraph (1)(a) shall apply to layout-designs (topographies) that are original in the sense that they are the result of their creators' own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of integrated circuits at the time of their creation.

(b) A layout-design (topography) that consists of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, fulfills the conditions referred to in subparagraph (a).

Article 4

The Legal Form of the Protection

Each Contracting Party shall be free to implement its obligations under this Treaty through a special law on layout-designs (topographies) or its law on copyright, patents, utility models, industrial designs, unfair competition or any other law or a combination of any of those laws.

Article 5

National Treatment

(1) *[National Treatment]*

Subject to compliance with its obligation referred to in Article 3(1)(a), each Contracting Party shall, in respect of the intellectual property protection of layout-designs (topographies), accord, within its territory

- (i) to natural persons who are nationals of, or are domiciled in the territory of, any of the other Contracting Parties, and
- (ii) to legal entities which or natural persons who, in the territory of any of the other Contracting Parties, have a real and effective establishment for the creation of layout-designs (topographies) or the production of integrated circuits,

the same treatment that it accords to its own nationals.

(2) *[Agents, Addresses for Service, Court Proceedings]*

Notwithstanding paragraph (1), any Contracting Party is free not to apply national treatment as far as any obligations to appoint an agent or to designate an address for service are concerned or as far as the special rules applicable to foreigners in court proceedings are concerned.

(3) *[Application of Paragraphs (1) and (2) to Intergovernmental Organizations]*

Where the Contracting Party is an Intergovernmental Organization, "nationals" in paragraph (1) means nationals of any of the States members of that Organization.

Article 6

The Scope of the Protection

(1) *[Acts Requiring the Authorization of the Holder of the Right]*

(a) Any Contracting Party shall consider unlawful the following acts if performed without the authorization of the holder of the right:

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- (i) the act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout-design (topography) in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in Article 3(2),
- (ii) the act of importing, selling or otherwise distributing for commercial purposes a protected layout-design (topography) or an integrated circuit in which a protected layout-design (topography) is incorporated.

(b) Any Contracting Party shall be free to consider unlawful also acts other than those specified in subparagraph (a) if performed without the authorization of the holder of the right.

(2) *[Acts Not Requiring the Authorization of the Holder of the Right]*

(a) Notwithstanding paragraph (1), no Contracting Party shall consider unlawful the performance, without the authorization of the holder of the right, of the act of reproduction referred to in paragraph (1)(a)(i) where that act is performed by a third party for private purposes or for the sole purpose of evaluation, analysis, research or teaching.

(b) Where the third party referred to in subparagraph (a), on the basis of evaluation or analysis of the protected layout-design (topography) ("the first layout-design (topography)"), creates a layout-design (topography) complying with the requirement of originality referred to in Article 3(2) ("the second layout-design (topography)"), that third party may incorporate the second layout-design (topography) in an integrated circuit or perform any of the acts referred to in paragraph (1) in respect of the second layout-design (topography) without being regarded as infringing the rights of the holder of the right in the first layout-design (topography).

(c) The holder of the right may not exercise his right in respect of an identical original layout-design (topography) that was independently created by a third party.

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(4) *[Sale and Distribution of Infringing Integrated Circuits Acquired Innocently]*

Notwithstanding paragraph (1)(a)(ii), no Contracting Party shall be obliged to consider unlawful the performance of any of the acts referred to in that paragraph in respect of an integrated circuit incorporating an unlawfully reproduced layout-design (topography) where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the said integrated circuit, that it incorporates an unlawfully reproduced layout-design (topography).

(5) *[Exhaustion of Rights]*

Notwithstanding paragraph (1)(a)(ii), any Contracting Party may consider lawful the performance, without the authorization of the holder of the right, of any of the acts referred to in that paragraph where the act is performed in respect of a protected layout-design (topography), or in respect of an integrated circuit in which such a layout-design (topography) is incorporated, that has been put on the market by, or with the consent of, the holder of the right.

Article 7

Exploitation; Registration, Disclosure

(1) *[Faculty to Require Exploitation]*

Any Contracting Party shall be free not to protect a layout-design (topography) until it has been ordinarily commercially exploited, separately or as incorporated in an integrated circuit, somewhere in the world.

(2) *[Faculty to Require Registration; Disclosure]*

(a) Any Contracting Party shall be free not to protect a layout-design (topography) until the layout-design (topography) has been the subject of an application for registration, filed in due form with the competent public authority, or of a registration with that authority; it may be required that the application be accompanied by the filing of a copy or drawing of the layout-design (topography) and, where the integrated circuit has been commercially exploited, of a sample of that integrated circuit, along with information defining the electronic function which the integrated circuit is intended to perform; however, the applicant may exclude such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout-design (topography).

(b) Where the filing of an application for registration according to subparagraph (a) is required, the Contracting Party may require that such filing be effected within a certain period of time from the date on which the holder of the right first exploits ordinarily commercially anywhere in the world the layout-design (topography) of an integrated circuit; such period shall not be less than two years counted from the said date.

fee. (c) Registration under subparagraph (a) may be subject to the payment of a

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Article 12

Safeguard of Paris and Berne Conventions

This Treaty shall not affect the obligations that any Contracting Party may have under the Paris Convention for the Protection of Industrial Property or the Berne Convention for the Protection of Literary and Artistic Works.

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Article 16

Entry Into Force of the Treaty

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(3) *[Protection of Layout-Designs (Topographies) Existing at Time of Entry Into Force]*

Any Contracting Party shall have the right not to apply this Treaty to any layout-design (topography) that exists at the time this Treaty enters into force in respect of that Contracting Party, provided that this provision does not affect any protection that such layout-design (topography) may, at that time, enjoy in the territory of that Contracting Party by virtue of international obligations other than those resulting from this Treaty or the legislation of the said Contracting Party.

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