

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE KINGDOM OF CAMBODIA
ON TRADE RELATIONS AND
INTELLECTUAL PROPERTY RIGHTS PROTECTION

PREAMBLE

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

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

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

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

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

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

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

Have agreed as follows:

CHAPTER I

TRADE

ARTICLE I

MOST-FAVORED-NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or

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

- A. customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;
- B. methods of payment for imports and exports, and the international transfer of such payments;
- C. rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;
- D. taxes and other internal charges of any kind applied directly or indirectly to imported products; and
- E. laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation, distribution, storage and use of products in the domestic market.

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

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

4. The provisions of section 1 and 2 of this Article shall not preclude action by either Party which is required or specifically permitted by any agreement administered by the World Trade Organization ("WTO"), or by any joint action or decision of the Members of the WTO, during such time as such Party is a Member of the WTO. Similarly, the provisions of sections 1 and 2 shall not apply to special advantages accorded by virtue of an agreement administered by the WTO.

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

- A. advantages accorded by either Party by virtue of such Party's

full membership in a customs union or free trade area, and

B. advantages accorded to third countries for the facilitation of frontier traffic.

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

ARTICLE II

NATIONAL TREATMENT

For the purposes of Chapter I of this Agreement:

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

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

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

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

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

6. If a Party has not acceded to the International Convention on the Harmonized Commodity Description and Coding System, it will undertake every reasonable effort to do so as soon as possible, but in any event no later than by December 31, 1997.

ARTICLE III

GENERAL OBLIGATIONS WITH RESPECT TO TRADE

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

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

ARTICLE IV

EXPANSION AND PROMOTION OF TRADE

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

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

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that

such articles are not sold or otherwise transferred.

ARTICLE V

GOVERNMENT COMMERCIAL OFFICES

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

ARTICLE VI

FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to such transactions, all commercial transactions shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.
2. Neither Party shall restrict the transfer from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals and companies of the other Party.
3. Without derogation from section 2 of this Article, in connection with trade in products and services, each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:

- A. opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited in financial institutions located in the territory of the Party;
- B. payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country; and
- C. rates of exchange and related matters, including access to freely usable currencies.

ARTICLE VII

TRANSPARENCY

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

ARTICLE VIII

AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible in all fields deemed to be in their mutual interest.

2. The Parties, taking into account the growing economic significance of service industries, shall consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE IX

EMERGENCY ACTION ON IMPORTS

1. If, as a result of unforeseen developments and of the effect of the obligations incurred by a Party under any agreement administered by the WTO or this Agreement, including tariff concessions, any product is being imported into the territory of that Party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the Party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

2. Before a Party shall take action pursuant to the provisions of section 1 of this Article, if the other Party has a substantial interest as exporter of the product concerned, then the importing Party shall afford the other Party an opportunity to consult with it in respect of the proposed action. In critical circumstances where delay would cause damage which it would be difficult to repair, action under section 1 of this Article may be taken provisionally without prior notice or consultation, on the condition that consultations shall be effected immediately after taking such action.

3. Unless a different solution is mutually agreed upon during the consultations, the importing Party shall be free to take or continue action under section 1 of this Article. In that event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

4. The Parties acknowledge that the elaboration of the emergency action provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

ARTICLE X

COMMERCIAL DISPUTES

For the purposes of Chapter I of this Agreement:

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not be entitled to claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States of America and nationals or companies of the Kingdom of Cambodia. Such arbitration may be provided for by agreements in contracts between such nationals and companies, or in separate written agreements between them.

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

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

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

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

CHAPTER II

INTELLECTUAL PROPERTY RIGHTS

ARTICLE XI

NATURE AND SCOPE OF INTELLECTUAL PROPERTY RIGHTS
OBLIGATIONS

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

- A. the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplications of their Phonograms, 1971 (Geneva Convention);
- B. the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971) (Berne Convention);
- C. the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention); and
- D. the International Convention for the Protection of New Varieties of Plants, 1978 (UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention).

If the Party has not acceded to, or rejoined or reestablished its membership in, the specified text of these conventions on or before the date of entry into force of this Agreement, it shall make every reasonable effort to do so as soon as possible, but no later than December 31, 1998.

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

is accorded by this Agreement.

ARTICLE XII

NATIONAL TREATMENT

For the purposes of Chapter II of this Agreement:

1. Each Party shall accord to nationals of the other Party treatment no less favorable than it provides to its own nationals with respect to the acquisition, protection, enjoyment and enforcement of intellectual property rights and any benefits derived therefrom.

2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions (including fixation, publication or exploitation in the territory of a Party) in order to acquire, enjoy, enforce and exercise rights or benefits in respect of copyright and related rights.

3. A Party may derogate from section 2 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of the other 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 XI above, provided that such derogation:

- A. is necessary to secure compliance with measures that are not inconsistent with this Agreement; and
- B. is not applied in a manner that would constitute a 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 XIII

COPYRIGHT

1. Each Party shall protect all works which embody original expression within the meaning of the Berne Convention (1971). In particular:

- A. all types of computer programs are literary works within the meaning of the Berne Convention and shall be protected as such; and,
- B. compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.

The protection a Party provides under paragraph 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 section 1, including the right to authorize or prohibit:

- A. the importation into the Party's territory of copies of the work, regardless of whether such copies have been placed on the market by the relevant right holder;
- 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 rental of the original or a copy of a computer program for direct or indirect commercial advantage.

Paragraph 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; and

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

4. No Party may, as a condition of according protection under this Article, require right holders to comply with any formalities in order to acquire rights in respect of copyright and related rights. If a Party grants any right or benefit in a work, phonogram or videogram, including remuneration from levies for private copying or rental activity, all such benefits shall be available on the basis of national treatment to nationals of the other Party.

5. Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 75 years from the end of the calendar year of first authorized publication, or, failing such authorized publication within 25 years from the making of the work, 100 years from the end of the calendar year of making.

6. Each Party shall confine limitations upon or exceptions to exclusive rights in respect of copyright and related rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder, and do not conflict with any other Article of this Agreement.

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

8. Each Party shall provide to the right holder in a sound recording the right to authorize or prohibit:

A. the direct or indirect reproduction, in whole or in part, of the sound recording;

B. the importation into the Party's territory of copies of the sound recording, regardless of whether such copies have been placed on the market by the relevant right holder;