

TRADE AND INVESTMENT

**Agreement Between the
UNITED STATES OF AMERICA
and KYRGYZSTAN**

Signed at Washington May 8, 1992

with

Exchanges of Letters



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

KYRGYZSTAN

Trade and Investment

*Agreement signed at Washington May 8, 1992;
Entered into force August 21, 1992.
With exchanges of letters.*

AGREEMENT ON TRADE RELATIONS BETWEEN
THE UNITED STATES OF AMERICA AND
THE REPUBLIC OF KYRGYZSTAN

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

Recognizing that the development of bilateral trade may contribute to better mutual understanding and cooperation,

Taking into account the favorable implications for trade expansion of the economic restructuring and the development of a market-based economy in Kyrgyzstan,

Considering that expanded trade relations between the Parties will contribute to the general well-being of the peoples of each Party, and promote respect for internationally recognized rights of working people,

Acknowledging that the development of trade relations and direct contact between United States nationals and companies and Kyrgyz nationals and companies will promote openness and mutual understanding,

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

Reaffirming their desire to develop economic cooperation in accordance with the principles and provisions of the Final Act signed in Helsinki on the 1st of August, 1975, and other documents of the Conference on Security and Cooperation in Europe, and in accordance with the Document of the Conference on Economic Cooperation in Europe held in Bonn in March-April 1990,

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

Desiring to create a framework which will foster the development and expansion of commercial ties between Kyrgyz nationals and companies and United States nationals and companies,

Have agreed as follows:

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) rules concerning sale, purchase, transport, distribution, storage and use of products on 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 the currency needed to pay for such imports.

4. The provisions of paragraphs 1, 2 and 3 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;

(b) advantages accorded to third countries for the facilitation of frontier traffic;

(c) advantages accorded to third countries in accordance with the General Agreement on Tariffs and Trade (the "GATT"), and advantages accorded to developing countries under the GATT and other international agreements; and

(d) actions taken under Article XI (Market Disruption) of this Agreement.

ARTICLE II

GENERAL OBLIGATIONS WITH RESPECT TO MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Recognizing the mutual benefit to trade relations on the basis of this Agreement and consistent with the most favored nation principles expressed in Article I, the Parties shall, on the basis of reciprocity and without detriment to relations with third countries, improve market

access for products and services of the other Party and optimize mutual commercial opportunities, including through the satisfactory reciprocation of market opening measures resulting from multilateral negotiations. Taking the above into account and resulting from the development of market mechanisms in Kyrgyzstan and its closer relationship with the GATT, opportunities shall be created to increase step-by-step national treatment for products and services of the United States.

2. Trade in products and services shall be effected by contracts between nationals and companies of Kyrgyzstan and nationals and companies of the United States concluded in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, delivery and terms of payment.

3. Neither Party shall require or encourage Kyrgyz nationals and companies or U.S. nationals or companies to engage in barter or countertrade transactions. Nevertheless, where nationals or companies decide to resort to countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

4. Each Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to like products originating in any third

country in relation to technical regulations and standards, including conformity testing and certification.

Furthermore, the Parties shall ensure that such technical regulations and standards are not prepared, adopted, or applied in a discriminatory manner, with a view to creating obstacles to bilateral trade, or to protect domestic production.

ARTICLE III

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 the exchange of goods and services and to secure favorable conditions for long-term development of trade relations between United States nationals and companies and Kyrgyz organizations.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Kyrgyz Party expects that, during the term of this Agreement, Kyrgyz nationals and companies shall increase their orders in the United States for products and services, while the United States Party anticipates that the effect of this Agreement shall be to encourage increased purchases by United States nationals and companies of products and services from

Kyrgyzstan. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. The Parties shall encourage interested nationals and companies of both countries to look for opportunities to expand trade in machinery, equipment and technologies, including creation of favorable financial conditions to carry on trade in such products.

4. 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 IV

GOVERNMENT COMMERCIAL OFFICES

1. Each Party shall allow government commercial offices to hire directly host country nationals and, subject to its laws and procedures on entry and residence of aliens, 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 their respective government commercial offices, especially with respect to events held on the premises of such commercial offices.

4. Each Party shall create favorable conditions for access by government commercial office personnel of the other Party to host country officials at both the federal and other levels, representatives of state enterprises, institutes, foreign trade organizations, cooperatives, joint ventures and other organizations.

ARTICLE V

BUSINESS FACILITATION

1. Each Party shall permit the establishment within its territory of commercial representations of companies of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial representations of companies and organizations of third countries. If either Party accredits commercial representations, that Party shall establish promptly an expedited accreditation procedure. Through this procedure, a central accrediting authority shall exercise its best

efforts to consider an application for accreditation and, in the case of a positive decision, to issue a certificate of accreditation to commercial representations of the other Party all within 60 days of the submission of such application. The accreditation procedure shall be administered with a goal of maximizing the participation in the market of the accrediting Party of companies already operating in that market, new entrants and small companies. Commercial representations of a Party accredited through the above procedure shall be accorded treatment no less favorable than that accorded to accredited commercial representations of third countries, except that they shall not be entitled to the assistance of the accrediting Party in locating office and residential space.

2. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

3. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

4. Each Party shall permit on a nondiscriminatory basis, at nondiscriminatory prices (where such prices are set or controlled by the government), commercial

representations of the other Party access to office space and living accommodations, whether or not designated for use by foreigners, as well as telecommunications, municipal and social services.

5. Each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

6. Each Party shall permit nationals and companies of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national or company.

7. Each Party shall permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party, upon request of the other Party, shall make available to interested nationals and companies of that Party, non-confidential, non-proprietary market information within its possession.

8. Each Party shall permit commercial representations to stock and provide an adequate supply of samples and

replacement parts for before and after sales service on a non-commercial basis.

9. Each Party shall facilitate direct contact between end-users in its territory and nationals and companies of the other Party. Each Party shall create favorable conditions for direct contacts between its organizations and government institutions whose decisions affect potential sales and purchases of goods and services and nationals and companies of the other Party. Each Party shall also encourage direct commercial transactions between Kyrgyz nationals and companies and U.S. nationals and companies, including those which act from either side as producers, end-users or buyers.

10. Each Party shall permit nationals and companies of the other Party to engage and serve as agents or consultants for nationals or companies of either Party and of third countries on prices and terms mutually agreed between the parties. Each Party shall permit nationals and companies of the other Party to engage its nationals and companies that act as distributors, provided that such nationals or companies are entitled to engage in such activities, on prices and terms mutually agreed between the parties.

11. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals and companies of the other Party.

12. Nothing in paragraphs 1, 5 or 10 of this Article shall be interpreted to confer any rights under either Party's laws and procedures on entry and residence of aliens.

ARTICLE VI
TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, 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 the other Party, when interested, the opportunity to consult on the formulation of rules and regulations which affect the conduct of business activities.

ARTICLE VII
FINANCIAL PROVISIONS RELATING TO TRADE
IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between Kyrgyz nationals and companies and United States nationals

and companies shall be made in United States dollars or any other freely convertible currency that may be mutually agreed upon by such nationals and companies.

2. No restrictions shall be placed by either Party upon the export from its territory of freely convertible currencies, including deposits or instruments representative of such currencies, obtained in an authorized manner in connection with trade in products and services by nationals and companies of the other Party.

3. Nationals and companies of a Party holding currency of the other Party received in an authorized manner may deposit such currency in authorized financial institutions located in the territory of the other Party and may maintain and use such currency for local expenses in accordance with applicable laws and regulations of the other Party.

4. Without derogation from paragraph 2, in connection with trade in products and services, each Party shall grant to nationals and companies of the other Party most-favored-nation treatment with respect to:

(a) opening and maintaining accounts, in both foreign and local currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of freely 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;

(c) rates of exchange offered by financial institutions authorized to deal in foreign exchange, and authorized means of obtaining freely convertible currencies; and

(d) the receipt and use of local currency.

ARTICLE VIII

PROTECTION OF INTELLECTUAL PROPERTY

1. Proceeding from the importance of intellectual property and the necessity of its legal protection to promote trade and economic cooperation and acknowledging the necessity of creating more favorable conditions for adequate and effective legal protection of intellectual property and its enforcement, the Parties have agreed that they shall:

(a) ensure in accordance with the provisions of internal legislation, protection and implementation of intellectual property rights, including copyright on literary, scientific and artistic works including computer programs and data bases, patents and other rights on inventions and industrial designs, know-how, trade secrets, trade marks and service marks, trade names, and protection against unfair competition;

(b) ensure that their international commitments in the field of intellectual property rights are honored. Accordingly, each Party reaffirms the commitments made with respect to industrial property in the Paris Convention for the Protection of Industrial Property of March 30, 1883, as revised at Stockholm on July 14, 1967 (the "Paris Convention"), and the commitments made with respect to copyright in the Universal Copyright Convention of September 6, 1952; and

(c) encourage appropriate arrangements between institutions within Kyrgyzstan and the United States to provide protection for intellectual property rights.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party agrees to submit, to their respective legislative bodies, the draft laws necessary to carry out the obligations of this Article and to exert their best efforts to enact and implement these laws. In this connection, the Parties will:

(a) enhance their copyright relations through adherence to the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971) (the "Berne Convention");

(b) provide copyright protection for computer programs and data bases as literary works under their copyright laws;

(c) (1) provide protection for sound recordings first fixed by their respective nationals or first published in their national territory;

(c) (2) such protection shall include, among the minimum rights guaranteed to producers of these works, a right of reproduction and a right of public distribution and importation, and notwithstanding the rights of an owner of a particular copy of a sound recording in such copy, the producer of a sound recording shall continue to enjoy the exclusive commercial rental and lending rights in such copy; and

(c) (3) the Parties agree, that immediately after both Parties have enacted protection for sound recordings originating in their respective territories, to take such steps as are necessary under domestic law to extend such protection to sound recordings originating in the other Party's territory;

(d) provide product and process patent protection for all areas of technology (except the Parties may exclude materials useful solely in atomic weapons) for a term of at least 20 years from the filing of an application or at least 17 years from the grant of the patent; and

(e) provide broad protection for trade secrets.

3. Upon the date when both Parties are members of the Berne Union, the protection of works in existence prior to

that date shall be determined in accordance with Article 18 of the 1971 Paris Act of the Berne Convention.

4. The Parties shall introduce in their legislative proposals the principles enumerated in the side letters to this Agreement. These side letters shall form an integral part of this Agreement.

5. The Parties agree to constitute a working group on intellectual property matters in accordance with the terms and for the purposes set forth in the side letters attached hereto.

ARTICLE IX

TRANSIT

Each Party shall facilitate the transit of products originating in the territory of the other Party and transported via the territory of the Party in accordance with the laws and regulations in force in the Party.

ARTICLE X

SUBJECTS FOR FURTHER ECONOMIC COOPERATION

1. The Parties shall take appropriate steps to foster economic cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

2. The Parties, taking into account the growing economic significance of service industries, agree to

consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE XI

MARKET DISRUPTION SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. The consultations provided for in paragraph 1 shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruption. Such consultations shall be

concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

3. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures it deems appropriate, and for such period of time it deems necessary, to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions introduced in connection with market disruption. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

4. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

5. In the selection of measures under this Article, the Parties shall endeavor to give priority to those measures which cause least disturbance to the achievement of the goals of this Agreement.

6. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article

is without prejudice to the right of either Party to apply laws applicable to unfair trade.

7. Each Party shall ensure that its domestic legislation and procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

ARTICLE XII

DISPUTE SETTLEMENT

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 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 and companies of Kyrgyzstan and nationals and companies of the United States. 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 to individual transactions may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules in which case the parties should designate an Appointing Authority under said Rules in a country other than Kyrgyzstan or United States.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country, other than the United States or Kyrgyzstan, that is a party to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in 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 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.

ARTICLE XIII
NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIV
CONSULTATIONS

1. The Parties agree to consult periodically within the framework of the Joint Kyrgyzstan-US Commercial Commission to review the operation of this Agreement, if and when established.

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

ARTICLE XV
DEFINITIONS

1. As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship or other organization legally constituted under the laws and regulations of a Party or an internal subdivision thereof,

whether or not organized for pecuniary gain or privately or governmentally owned; provided that, either Party reserves the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations.

(b) "commercial representation," means a representation of a company or organization of a Party.

(c) "national," means a natural person who is a national of a Party under its applicable law.

ARTICLE XVI

GENERAL EXCEPTIONS

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

(a) measures necessary to secure compliance with laws or regulations which are not contrary to the purposes of this Agreement;

(b) measures for the protection of intellectual property rights and the prevention of deceptive practices as set out in Article VIII of this Agreement (and related side letters); or

(c) any other measure referred to in Article XX of the GATT.

ARTICLE XVII

ENTRY INTO FORCE, TERM AND TERMINATION

1. This Agreement (including its side letters which form an integral part of the Agreement) shall enter into force upon an exchange of diplomatic notes in which the Parties notify each other that all necessary legal requirements for entry into force have been fulfilled and shall remain in force as provided in this Article.

2. The initial term of this Agreement shall be three years, subject to paragraph 4 below.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

4. Either Party may terminate this Agreement upon sixty days written notice to the other Party and in such case the Parties will, to the fullest extent practicable,

seek to minimize possible disruption to their trade relations.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at Washington this eighth day of May, 1992, in duplicate, in the English and Russian languages, both texts being equally authentic. A Kyrgyz language text shall be prepared which shall be considered equally authentic upon an exchange of diplomatic notes confirming their conformity with the English language text.

FOR THE UNITED STATES
OF AMERICA:



FOR THE REPUBLIC OF
KYRGYZSTAN:



СОГЛАШЕНИЕ

о торговых отношениях между Республикой Кыргызстан и Соединенными Штатами Америки

Республика Кыргызстан и Соединенные Штаты Америки (в дальнейшем именуемые вместе как "Стороны" и отдельно как Сторона"), осозная, что развитие двухсторонней торговли может внести вклад в лучшее взаимопонимание и сотрудничество,

принимая во внимание благоприятное воздействие, оказываемое на расширение торговли экономической перестройкой и развитием рыночной экономики в Республике Кыргызстан,

считая, что развитые торговые отношения между Сторонами будут вносить вклад в общее благосостояние народов каждой Стороны и способствовать уважению международно признанных прав трудящихся,

признавая, что развитие торговых отношений и прямых контактов между кыргызскими гражданами и компаниями и американскими гражданами и компаниями будет способствовать открытости и взаимопониманию, рассматривая экономические связи как важный и необходимый элемент в укреплении их двусторонних отношений, подтверждая свое желание развивать экономическое сотрудничество в соответствии с принципами и положениями Заключительного акта, подписанного в Хельсинки 1 августа 1975 года, другими документами Совещания по безопасности и сотрудничеству в Европе и в соответствии с Документом Боннской конференции по экономическому сотрудничеству в Европе, состоявшейся в марте-апреле 1990 года, будучи убежденными, что Соглашение о торговых отношениях между двумя Сторонами будет наилучшим образом отвечать их взаимным интересам, и желая создать основу, которая бы служила развитию и расширению коммерческих связей между кыргызскими гражданами и компаниями и американскими гражданами и компаниями,

согласились о нижеследующем:

СТАТЬЯ I

Режим наибольшего благоприятствования и недискриминационный режим

1. Каждая Сторона без каких-либо условий предоставит товарам, происходящим из или экспортируемым на территорию другой Стороны, режим не менее благоприятный чем тот, который предоставлен подобным товарам, происходящим из или экспортируемым на территорию любой третьей страны, во всех вопросах, относящихся к:

a/ таможенным пошлинам и сборам любого вида, налагаемым на или в связи с импортом или экспортом, включая способ взимания таких пошлин и сборов;

b/ способам оплаты импорта и экспорта и международного перевода таких платежей;

c/ правилам и формальностям в связи с импортом и экспортом, включая те, которые относятся к таможенной очистке, транзиту, складированию и перегрузке;

d/ налогам и другим внутренним сборам любого рода, принимаемым прямо или косвенно к импортируемым товарам; и

e/ правилам, касающимся продажи, покупки, перевозки, распределения, хранения и использования товаров на внутреннем рынке.

2. Каждая Сторона предоставит товарам, происходящим из или экспортируемым на территорию другой Стороны, недискриминационный режим в отношении применения количественных ограничений и выдачи лицензий.

3. Каждая Сторона предоставит импортируемым товарам и услугам, происходящим из территории другой Стороны, недискриминационный режим в отношении распределения валютных средств, необходимых для оплаты такого импорта.

4. Положение пунктов 1, 2, и 3 не будут применяться к:

а/ преимуществам, предоставляемым каждой из Сторон вследствие полного членства такой Стороны в таможенном союзе или свободной торговли;

б/ преимуществам, предоставляемым третьим странам для облегчения приграничной торговли;

с/ преимуществам, предоставляемым третьим странам в соответствии с Генеральным Соглашением о тарифах и торговле /ГАТТ/, и преимуществам, предоставляемым развивающимся странам по ГАТТ и другим международным соглашениям; и

д/ действиям, предпринятым в соответствии со Статьей XI (Нарушение рынка) настоящего Соглашения.

СТАТЬЯ II

Общие обязательства в отношении доступа к рынку для товаров и услуг

1. Сознвая взаимовыгодность торговых отношений на основе настоящего Соглашения и в соответствии с принципами режима наибольшего благоприятствования, изложенными в Статье I, Стороны будут на основе взаимности и без ущерба отношениям с третьими странами, улучшать доступ к рынку для товаров и услуг другой Стороны и создавать оптимальные взаимные коммерческие возможности, в том числе путем принятия взаимных удовлетворительных мер по доступу к рынку, вытекающих из многосторонних переговоров.

Принимая во внимание вышеизложенное и исходя из развития рыночного механизма в Республике Кыргызстан и его более тесных отношений с ГАТТ, будут создаваться возможности для постепенного увеличения предоставления национального режима для товаров и услуг Соединенных Штатов.

2. Торговля товарами и услугами будет осуществляться посредством контрактов между гражданами и компаниями Республики Кыргызстан и гражданами и компаниями Соединенных Штатов, заключаемых во исполнение их независимого коммерческого решения и на основании обычных коммерческих соображений, таких, как: цена, качество, поставка и условия платежа.

3. Ни одна из Сторон не будет требовать от граждан и компаний Республики Кыргызстан или граждан и компаний Соединенных Штатов или поощрять их осуществлять операции по бартерной или встречной торговле. Однако, когда граждане и компании решат прибегнуть к операциям по встречной торговле, Стороны будут поощрять предоставление ими друг другу всей необходимой информации для облегчения сделки.

4. Каждая Сторона предоставит товарам импортируемым с территории другой Стороны режим не менее благоприятный, чем тот, который предоставляется подобным товарам, происходящим из любой третьей страны, в отношении технических условий и стандартов, включая проведение испытаний на соответствие техническим условиям и стандартам и сертификацию. Помимо того, Стороны обеспечат, чтобы такие технические условия и стандарты не разрабатывались, не

принимались и не применялись дискриминационным путем с целью создания препятствий для двусторонней торговли или для защиты национального производства.

СТАТЬЯ III

Расширение и поощрение торговли

1. Стороны подтверждают свое желание расширять торговлю товарами и услугами в соответствии с условиями настоящего Соглашения. Они предпримут необходимые меры для поощрения и облегчения обмена товарами и услугами и обеспечения благоприятных условий для долгосрочного развития торговых отношений между гражданами и компаниями Республики Кыргызстан и гражданами и компаниями Соединенных Штатов.

2. Стороны предпримут необходимые меры для поощрения расширения коммерческих контактов в целях увеличения торговли. В этой связи Кыргызская Сторона ожидает, что в течение срока действия настоящего Соглашения, граждане и компании Республики Кыргызстан увеличат свои заказы в Соединенных Штатах на товары и услуги, в то время как Американская Сторона ожидает, что настоящее Соглашение будет влиять на поощрение увеличения закупок гражданами и компаниями Соединенных Штатов товаров и услуг из Республики Кыргызстан. В этих целях Стороны опубликуют настоящее Соглашение и обеспечат его доступность для всех заинтересованных сторон.

3. Стороны будут содействовать поиску заинтересованным организациям, гражданам и компаниям обеих стран возможностей расширения торговли машинами, оборудованием и технологиями, включая создание благоприятных финансовых условий для осуществления торговли этими товарами.

4. Каждая Сторона будет поощрять и облегчать проведение мероприятий по развитию торговли, таких, как: ярмарки, выставки, визиты и семинары на своей территории и на территории другой Стороны. Равным образом, каждая Сторона будет поощрять и облегчать участие своих соответствующих граждан и компаний в таких мероприятиях. В соответствии с законами, действующими в пределах их соответствующих территорий, Стороны согласились разрешить импортировать и реэкспортировать на беспошлинной основе все изделия, предназначенные для использования в таких мероприятиях, при условии, что такие изделия не будут продаваться или как-либо иначе передаваться.

СТАТЬЯ IV

Правительственные торговые учреждения

1. Каждая Сторона позволит правительственным торговым учреждениям непосредственно нанимать граждан принимающей страны и, в соответствии с ее законами и процедурами о въезде и проживании иностранцев, также граждан третьих стран.

2. Каждая Сторона обеспечит беспрепятственный доступ граждан принимающей страны в правительственные торговые учреждения другой Стороны.

3. Каждая Сторона будет поощрять участие своих граждан, компаний в деятельности своих соответствующих правительственных торговых учреждений,

особенно в отношении мероприятий, проводимых в помещениях таких торговых учреждений.

4. Каждая Сторона будет создавать благоприятные условия для доступа персонала правительственного торгового учреждения другой Стороны к официальным лицам принимающей страны на федеральном и других уровнях, а также к представителям государственных предприятий, институтов, внешнеторговых организаций, кооперативов, совместных предприятий и других организаций.

СТАТЬЯ V

Создание благоприятных условий для коммерческой деятельности

1. Каждая Сторона разрешит создание на своей территории коммерческих представительств фирм другой Стороны, предоставит таким представительством режим не менее благоприятный, чем тот, который предоставляется коммерческим представительством фирм и организаций третьих стран. Если какая-либо из Сторон аккредитует коммерческие представительства, то эта Сторона в короткий срок установит ускоренную процедуру аккредитации.

С помощью этой процедуры центральное ведомство по аккредитации будет предпринимать все усилия для рассмотрения заявлений об аккредитации и, в случае положительного решения, выдавать сертификат об аккредитации коммерческим представительством другой Стороны в течении 60 дней с момента подачи такого заявления. Процедура аккредитации будет производиться с целью максимального увеличения присутствия на рынке аккредитующей Стороны компаний, которые уже действуют на этом рынке, новых и малых компаний. Коммерческим представительством Стороны, аккредитованным с помощью указанной процедуры, будет представляться режим не менее благоприятный чем тот, который представляется аккредитованным коммерческим представительством третьих стран, за исключением того, что они ^{не} могут рассчитывать на содействие аккредитующей Стороны в подыскании служебных и жилых помещений.

2. Каждая Сторона обеспечит коммерческим представительством другой Стороны справедливый и равный режим в отношении осуществления их операций.

3. Каждая Сторона разрешит коммерческим представительством другой Стороны импортировать и использовать в соответствии с нормальной коммерческой практикой канцелярское и другое оборудование, такое, как пишущие машинки, копировальные аппараты, компьютеры, телефаксы, в связи с осуществлением их деятельности на территории такой Стороны.

4. Каждая Сторона разрешит на недискриминационной основе, по недискриминационным ценам /в тех случаях когда такие цены устанавливаются и контролируются правительством/ коммерческим представительством другой Стороны доступ к служебным и жилым помещениям вне зависимости от того предназначены они для иностранцев или нет, а также к средствам электросвязи и коммунальным и социальным услугам.

5. Каждая Сторона разрешит таким коммерческим представительством, созданным на ее территории, непосредственно нанимать служащих, которые являются гражданами любой из Сторон или третьих стран, и производить оплату услуг таких служащих на условиях и в валюте, взаимно согласованных между сторонами с соблюдением законов такой Стороны о минимальной зарплате.

6. Каждая Сторона разрешит гражданам и компаниям другой Стороны рекламировать свои товары и услуги /а/ посредством прямого соглашения с

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рекламными агентствами, включая на телевидении, радио, в печати и с использованием наружной рекламы и /в/ путем непосредственной рассылки по почте рекламных материалов, включая использование приложенных конвертов и открыток с обратным адресом таких граждан и компаний.

7. Каждая Сторона разрешит гражданам и компаниям другой Стороны проводить изучение рынка на своей территории как напрямую, так и на основе контрактов. Для облегчения изучения рынка каждая Сторона по просьбе другой Стороны будет предоставлять заинтересованным гражданам и компаниям такой Стороны информацию о рынке неконфиденциального характера и не находящуюся в чьей-либо собственности, которой она располагает.

8. Каждая Сторона разрешит коммерческим представительствам иметь достаточный запас образцов и запчастей для предпродажного и послепродажного обслуживания на некоммерческой основе.

9. Каждая Сторона будет облегчать прямые контакты между конечными потребителями на своей территории и организациями, гражданами и компаниями другой Стороны. Каждая Сторона будет создавать благоприятные условия для прямых контактов между ее организациями и правительственными учреждениями, чьи решения влияют на потенциальные продажи и закупки товаров и услуг, гражданами и компаниями другой Стороны. Каждая Сторона будет также поощрять прямые коммерческие сделки между гражданами и компаниями Республики Кыргызстан и гражданами и компаниями Соединенных Штатов, включая те из них, которые выступают с каждой стороны в качестве производителей, конечных потребителей или покупателей.

10. Каждая Сторона разрешит гражданам и компаниям другой Стороны наниматься и выступать в качестве агентов или консультантов, представляющих граждан и компании каждой из Сторон и третьих стран, по ценам и на условиях, взаимно согласованных между сторонами. Каждая Сторона разрешит гражданам и компаниям другой Стороны привлекать ее граждан и компании, которые выступают в качестве оптовиков, при условии, что такие граждане и компании имеют право заниматься такой деятельностью, по ценам и на условиях взаимно согласуемых между сторонами.

11. Ни одна из Сторон не будет принимать меры, которые бы необоснованно нарушали контрактные права или права собственности либо другие права, приобретенные в пределах ее территории гражданами и компаниями другой Стороны.

12. Ничто, содержащееся в параграфах 1, 5, или 10 настоящей Статьи, не будет толковаться как предоставление каких-либо прав сверх предусмотренных законами и правилами любой из Сторон о въезде и проживании иностранцев.

СТАТЬЯ VI Гласность

1. Каждая Сторона будет своевременно делать доступными для публичного ознакомления все законы и правила, относящиеся к коммерческой деятельности, включая торговлю, капиталовложения, налогообложение, банковское дело, страхование и другие финансовые услуги, транспорт и труд.

2. Каждая Сторона будет обеспечивать гражданам, компаниям другой Стороны доступ к имеющимся данным неконфиденциального характера, не находящимся в чьей-либо собственности, по национальной экономике и ее отдельным отраслям, в том числе к информации по внешней торговле.

3. Каждая Сторона предоставит другой Стороне при наличии заинтересованности возможность консультироваться по вопросам формулирования правил и положений, которые влияют на ведение деловой деятельности.

СТАТЬЯ VII

Финансовые положения, относящиеся к торговле товарами и услугами

1. Если не согласовано иначе между сторонами отдельных сделок, то все коммерческие сделки между гражданами и компаниями Республики Кыргызстан и гражданами и компаниями Соединенных Штатов будут производиться в долларах Соединенных Штатов или любой другой свободно конвертируемой валюте, которая может быть взаимно согласована между такими гражданами и компаниями.

2. Ни одна из Сторон не будет налагать никаких ограничений на вывоз из своей территории свободно конвертируемых валют, включая вклады или инструменты, представленные в таких валютах, полученных законным путем в связи с торговлей товарами и услугами, гражданами и компаниями другой Стороны.

3. Граждане и компании одной Стороны, имеющие валютные средства другой Стороны, полученные на законных основаниях, могут вкладывать такие средства в уполномоченные для этих целей финансовые учреждения, расположенные на территории другой Стороны, а также вести свои счета и использовать указанные валютные средства на местные расходы в соответствии с установленными для данных целей законами и правилами другой Стороны.

4. Не нарушая параграф 2, в связи с торговлей товарами и услугами каждая Сторона будет предоставлять гражданам и компаниям другой Стороны режим наибольшего благоприятствования в отношении:

a/ открытия и ведения счетов как в иностранной, так и местной валюте и доступа к вложенным средствам в финансовых учреждениях, расположенных на территории этой Стороны;

b/ расчетов, платежей и переводов свободно конвертируемых валют или представляющих их финансовых инструментов между территориями двух Сторон, а также между территорией этой Стороны и какой-либо третьей страны;

c/ обменных курсов, предлагаемых финансовыми учреждениями, уполномоченными совершать валютные операции, и законных способов приобретения свободно конвертируемых валют; и

d/ получения и использования местной валюты.

СТАТЬЯ VIII

Охрана интеллектуальной собственности

1. Исходя из важности интеллектуальной собственности и необходимости ее правовой охраны для развития торговли и экономического сотрудничества и признавая необходимость создания более благоприятных условий для адекватной и эффективной правовой охраны интеллектуальной собственности и ее обеспечения,

Стороны согласились что они будут:

а/ обеспечивать, в соответствии с положениями национального законодательства каждой страны, охрану и осуществление прав интеллектуальной собственности, включая авторское право на литературные, научные и художественные произведения, включающие программы для ЭВМ и базы данных, патенты и другие права на изобретения и промышленные образцы, ноу-хау, торговые секреты, товарные знаки и знаки обслуживания, фирменные наименования и защиту от недобросовестной конкуренции;

б/ обеспечивать соблюдение своих международных обязательств в области прав интеллектуальной собственности. Соответственно, каждая Сторона вновь подтверждает обязательства, принятые в отношении промышленной собственности в Парижской конвенции по охране промышленной собственности от 30 марта 1883 года, пересмотренной в Стокгольме 14 июля 1967 года /Парижская конвенция/, а также обязательства, принятые в отношении авторского права во Всемирной конвенции об авторском праве от 6 сентября 1952 года; и

с/ поощрять соответствующие соглашения между учреждениями Республики Кыргызстан и Соединенных Штатов по предоставлению охраны прав интеллектуальной собственности.

2. В целях обеспечения адекватной и эффективной охраны и осуществления прав интеллектуальной собственности, каждая из Сторон согласилась представить в свои соответствующие законодательные органы проекты законов, необходимых для осуществления обязательств по настоящей статье, и сделать все от нее зависящее для принятия этих законов и введения их в действие. В этой связи Стороны:

а/ укрепят свои отношения в области авторского права посредством присоединения к Бернской конвенции по охране литературных и художественных произведений /Парижская редакция 1971 года/ /Бернская конвенция/;

б/ предоставят охрану нормами авторского права программам для ЭВМ и базам данных как литературным произведениям по законам их стран об авторском праве;

с/(1) предоставят охрану прав на звукозаписи, впервые сделанные их соответствующими гражданами или компаниями или впервые опубликованные на их территории;

с/(2) такая охрана будет включать среди минимума прав, гарантированных производителям этих произведений, право воспроизведения и право публичного распространения и импорта, и, независимо от прав собственника экземпляра звукозаписи - право производителя этой звуковой записи продолжать пользоваться исключительным правом коммерческого проката и сдачи в наем этой записи;

с/(3) Стороны согласились, что немедленно после введения обеими Сторонами охраны прав на звуковые записи, произведенные на их территориях, они предпримут меры, необходимые по национальному законодательству для предоставления такой охраны звуковым записям, произведенным на территории другой Стороны;

д/ предоставят патентную охрану продукту и способу во всех областях технологии /кроме тех случаев, когда Стороны могут исключать из такой охраны материалы, применяемые сугубо в атомном оружии/, по крайней мере на срок 20 лет с даты подачи заявки на патент или по крайней мере на срок 17 лет после выдачи патента;

е/ предоставят широкую охрану торговым секретам.

3. Начиная с даты, когда обе Стороны станут членами Бернского Союза, охрана произведений, существующих на эту дату, будет определяться в соответствии со статьей 18 Бернской конвенции /Парижская редакция 1971 года/.

4. Стороны включают в проекты своих законодательных предложений принципы, перечисленные в письмах Сторон к настоящему Соглашению. Эти письма Сторон являются частью настоящего Соглашения.

5. Стороны согласились создать рабочую группу по вопросам интеллектуальной собственности в соответствии с положениями и целями, изложенными в письмах Сторон, приложенных к настоящему Соглашению.

СТАТЬЯ IX

Транзит

Каждая Сторона будет облегчать транзит товаров, происходящих из территории другой стороны и транспортируемых через территорию первой Стороны в соответствии с законами и положениями, действующими у этой Стороны.

СТАТЬЯ X

Области дальнейшего экономического сотрудничества

1. Стороны предпримут соответствующие шаги для укрепления экономического сотрудничества на возможно широкой основе во всех областях, представляющих взаимный интерес, включая также статистику и стандарты.

2. Стороны, принимая во внимание растущее экономическое значение индустрии услуг, согласны проводить консультации по вопросам, влияющим на ведение деятельности в сфере услуг между двумя странами, и по конкретным вопросам, представляющим взаимный интерес и относящимся к отдельным секторам сферы услуг, в целях, помимо прочего, достижения максимально возможного доступа к рынку и его либерализации.

СТАТЬЯ XI

Меры по предотвращению нарушения рынка

1. Стороны согласились проводить незамедлительные консультации по просьбе одной из Сторон, когда импорт товаров, происходящих из территории другой Стороны, уже осуществленный или который должен осуществиться, вызывает, или угрожает вызвать, или в значительной мере способствует нарушению рынка. Нарушение рынка происходит в национальной промышленности, когда импорт какого-либо товара, подобного или прямо конкурирующего с товаром, производимым национальной промышленностью, быстро увеличивается либо в абсолютных пропорциях, либо относительно, представляя собой, таким образом, существенную причину материального ущерба или его угрозы такой национальной промышленности.

2. Консультации, предусмотренные в параграфе 1, будут иметь целью: /a/ представить и проанализировать факторы, относящиеся к такому импорту, который может вызывать, или угрожает вызвать, или значительно способствует нарушению рынка, и /b/ выявить средства предотвращения или устранения такого нарушения рынка. Такие консультации должны быть завершены в течении шестидесяти дней с даты получения просьбы о проведении подобных консультаций, если только Стороны не договорятся об ином.

3. Если в ходе консультаций взаимно не согласовано иное решение, импортирующая Сторона может /а/ ввести на необходимый по ее мнению срок количественные ограничения импорта, тарифные меры или любые другие ограничения либо меры, которые она считает целесообразным для предотвращения, либо устранения угрозы нарушения, или действительного нарушения рынка, и /б/ предпринять соответствующие меры для обеспечения такого положения, чтобы импорт из территории другой Стороны соответствовал количественным или иным ограничениям, введенным в связи с нарушением рынка. В этом случае другая Сторона свободна отступить от своих обязательств по настоящему Соглашению в примерно эквивалентных размерах торговли.

4. Когда по мнению импортирующей Стороны необходимо предпринять срочные меры для предотвращения или устранения такого нарушения рынка, импортирующая Сторона может в любое время и без предварительных консультаций предпринять такие меры, при условии, что подобные консультации будут запрашиваться сразу после этого.

5. При выборе мер в соответствии с настоящей Статьей Стороны будут отдавать приоритет тем из них, которые оказывают наименьшее негативное влияние на достижение целей настоящего Соглашения.

6. Стороны признают, что выработка положений по предотвращению нарушения рынка в настоящей Статье не противоречит праву любой из Сторон применять законы, действующие в отношении недобросовестной торговли.

7. Каждая Сторона обеспечит чтобы ее внутреннее законодательство и правила относительно определения нарушения рынка носили гласный характер и давали возможность Сторонам, которых оно затронуло, изложить свои взгляды.

СТАТЬЯ XII Урегулирование споров

1. Граждане, компании любой из Сторон будут пользоваться национальным режимом при обращении в любые суды и административные органы на территории другой Стороны в качестве истцов, ответчиков или в каком-либо ином качестве. Они не будут претендовать на иммунитет или пользоваться им в случае возбуждения судебного процесса или исполнения решения суда, при судебном разбирательстве о признании и приведении в исполнение арбитражного решения или в случаях ответственности на территории другой Стороны в связи с торговыми сделками. Они также не будут претендовать на иммунитет от налогообложения или пользоваться им в связи с коммерческими сделками за исключением тех случаев, когда это может быть предусмотрено иными двусторонними соглашениями.

2. Стороны будут поощрять применение арбитража для урегулирования споров, возникающих из торговых сделок, заключенных между Гражданами и компаниями Республики Кыргызстан и гражданами и компаниями Соединенных Штатов. Такой арбитраж может быть предусмотрен соглашениями, содержащимися в контрактах между гражданами, компаниями, или в отдельных письменных соглашениях между ними.

3. Стороны отдельных сделок могут предусматривать проведение арбитража по любым международно признанным правилам арбитража, включая Регламент ЮНСИТРАЛ, причем в этом случае стороны должны в соответствии с данным Регламентом указать компетентный орган в иной стране, нежели Республика Кыргызстан или Соединенные Штаты.

4. Если стороны не договорятся об ином, то они должны указать местом проведения арбитража страну, иную нежели Республика Кыргызстан или Соединенные Штаты, которая является участницей Конвенции ООН о признании и проведении в исполнение иностранных арбитражных решений, подписанной в Нью-Йорке 10 июня 1958 года.

5. Ничто в настоящей Статье не будет толковаться таким образом, чтобы помешать, а Стороны не будут запрещать сторонам договариваться о какой-либо иной форме арбитража или урегулирования спора, которую они взаимно предпочтут и которая, по их мнению, наилучшим образом отвечает их конкретным потребностям.

6. Каждая Сторона обеспечит, чтобы на ее территории имелись эффективные средства по признанию и проведению в исполнение арбитражных решений.

СТАТЬЯ XIII Национальная безопасность

Положения настоящего Соглашения не ограничивают права каждой из Сторон предпринимать любые действия по защите интересов своей безопасности.

СТАТЬЯ XIV Консультации

1. Стороны согласились проводить периодические консультации в рамках Совместной Кыргызско-Американской комиссии по вопросам торговли для рассмотрения хода выполнения настоящего Соглашения.

2. Стороны согласились проводить срочные консультации по соответствующим каналам по просьбе любой из Сторон для обсуждения возникающих вопросов, касающихся толкования или применения настоящего Соглашения и других соответствующих аспектов отношений между Сторонами.

СТАТЬЯ XV Определения

1. При использовании в настоящем Соглашении нижеприведенные термины будут иметь следующее значение:

"компания" означает любой вид корпорации, компании, ассоциации, единоличного предпринимательства или другую организацию, юридически созданную в соответствии с законами и правилами Стороны или ее внутренней территориально административной единицы, независимо от того создана ли она для извлечения прибыли и входит в частный или государственный сектор. При этом любая из Сторон оставляет за собой право лишить любую компанию преимуществ, предоставляемых по настоящему Соглашению, если граждане любой третьей страны контролируют такую компанию и в случае, если компания другой Стороны является компанией, не занятой существенной деловой деятельностью на территории другой Стороны, или, если она контролируется гражданами третьей страны, с которой страна, лишаящая таких преимуществ, не поддерживает нормальных экономических отношений;

b/ "коммерческое представительство" означает представительство компании или организации Стороны;

c/ "гражданин" означает физическое лицо, которое является гражданином Стороны в соответствии с ее применимым законодательством;

СТАТЬЯ XVI
Общие исключения

1. Ничто, содержащееся в настоящем Соглашении, не будет толковаться как запрет к принятию или исполнению Стороной следующих мер, при условии, что не будут применяться таким образом, который являлся бы средством произвольной или необоснованной дискриминации между странами, где действуют одинаковые условия, или средством скрытого ограничения международной торговли:

а/ мер, необходимых для обеспечения соблюдения законов или правил, которые не противоречат целям настоящего Соглашения;

б/ мер защиты прав на интеллектуальную собственность и предупреждения обманной практики, как определено в Статье VIII настоящего Соглашения /и в соответствующих Письмах Сторон/; или

с/ любых других мер, предусмотренных в Статье XX ГАТТ.

СТАТЬЯ XVII
Вступление в силу, срок действия и прекращения действия

1. Настоящее Соглашение /включая Письма Сторон к нему, которые являются неотъемлемой частью настоящего Соглашения/ вступит в силу после обмена дипломатическими нотами, в которых Стороны уведомят друг друга о выполнении всех юридических требований, необходимых для его вступления в силу, и будет оставаться в силе, как это предусматривается в настоящей Статье.

2. Первоначальный срок действия настоящего Соглашения составит три года, с учетом предусмотренного ниже в параграфе 4.

3. Настоящее Соглашение будет продлеваться на каждые последующие трехлетние периоды, если ни одна из Сторон не заявит в письменной форме другой Стороне о своем намерении расторгнуть Соглашение не позднее чем за 60 дней до истечения соответствующего периода.

4. Каждая Сторона может расторгнуть настоящее Соглашение после того как письменно уведомит об этом другую Сторону, и в таком случае Стороны будут стараться, насколько это возможно, уменьшить вероятный ущерб, который может быть нанесен их торговым отношениям.

В подтверждение чего, нижеподписавшиеся, уполномоченные должным образом, подписали настоящее Соглашение.

Совершено в Вашингтоне *8 мая* 1992 года, в двух экземплярах на русском и английском языках, причем оба текста имеют одинаковую силу.

За
Республику Кыргызстан



За
Соединенные Штаты Америки



Washington, May 8, 1992

Dear Mr. Chairman:

I have the honor to refer to the Agreement on Trade Relations between the United States of America and the Union of Soviet Socialist Republics, signed in Washington on June 1, 1990 and approved by the United States Congress in November 1991 (hereinafter referred to as "The Agreement").

Owing to the change in Parties, and the obsolescence of certain references in the Agreement due to the passage of time, I have the honor to propose that the Agreement be modified and re-signed to incorporate the following technical adjustments:

Where the Agreement refers to a Party or its territory it shall refer, as appropriate, to the Republic of Kyrgyzstan or its territory, or to the United States of America or its territory.

The Agreement shall be signed on behalf of the Republic of Kyrgyzstan by Askar I. Sarygulov, Chairman of the State Committee for Foreign Economic Relations.

The side and amending letters to the Agreement shall be addressed to, and signed on behalf of the Republic of Kyrgyzstan by Askar I. Sarygulov, Chairman of the State Committee for Foreign Economic Relations.

A text of the Agreement shall be established in the Kyrgyz language, which shall be equally authentic with the English language text.

It is understood that in the exchange of side letters of June 1, 1990 concerning the protection of intellectual property, without prejudice to any obligations to review, introduce, support, enact or implement specified provisions of law, references to drafts of legislative acts introduced before the date of this note are not relevant for the purposes of this Agreement and therefore shall be deleted;

The Honorable Askar I. Sarygulov
Chairman
State Committee for
Foreign Economic Relations
Republic of Kyrgyzstan

the Government of the Republic of Kyrgyzstan will introduce in 1993 the draft laws necessary to fulfill the obligations contained in Article VIII of the Agreement and will undertake all possible measures to enact these laws during 1993.

It is understood that the exchange of side letters of June 1, 1990 and related annexes concerning the status of the U.S. commercial office and the trade representation in Washington, D.C. initiated by Secretary of Commerce Robert A. Mosbacher of the United States of America is no longer relevant for the purposes of the Agreement, and shall therefore be deleted.

It is understood that in the absence of a Joint U.S.-Kyrgyz Commercial Commission the periodic consultations referred to in Article XIV, paragraph 1, shall be conducted in an appropriate framework.

The text of the Agreement shall reflect the fact that "organization" with respect to the Soviet Union means national and company with respect to the Republic of Kyrgyzstan.

It is understood that with respect to Article VIII, paragraph 1(b) of the Agreement, the Republic of Kyrgyzstan is bound by the obligations of the Universal Copyright Convention of September 6, 1952 with an effective date of May 27, 1973, and of the Paris Convention for the Protection of Industrial Property of March 30, 1883, as revised at Stockholm on July 14, 1967.

It is understood by the Government of the United States of America and by the Government of the Republic of Kyrgyzstan that the exchange of letters regarding lend lease debt of the former Soviet Union does not confer on the United States treatment preferential to that of any other creditor country of the former Soviet Union with regard to multilateral action on the debt of the former Soviet Union. The Government of the United States undertakes to confirm and explain this understanding to any creditor country of the former Soviet Union which may raise a question regarding this matter.

It is further understood that it is the intention of the Government of the United States of America to include the joint and several obligation with respect to lend lease debt, once it becomes due, in the deferral of principal payments agreed to by seventeen bilateral creditors of the former Soviet Union on January 4, 1992, and extended on March 31, 1992, and in any multilateral action on debt of the former Soviet Union taken subsequent to this deferral.

I have the further honor to propose that, if the foregoing is acceptable, this letter and your affirmative letter in reply shall constitute an agreement between the United States of America and the Republic of Kyrgyzstan.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carla A. Hills". The signature is written in black ink and is positioned above the printed name.

Carla A. Hills
United States Trade Representative
United States of America

Washington, May 8, 1992

Dear Madam Ambassador:

I have the honor to confirm receipt of your letter which reads as follows:

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Carla A. Hills
United States Trade Representative
United States of America

in 1993 the draft laws necessary to fulfill the obligations contained in Article VIII of the Agreement and will undertake all possible measures to enact these laws during 1993.

It is understood that the exchange of side letters of June 1, 1990 and related annexes concerning the status of the U.S. commercial office and the trade representation in Washington, D.C. initiated by Secretary of Commerce Robert A. Mosbacher of the United States of America is no longer relevant for the purposes of the Agreement, and shall therefore be deleted.

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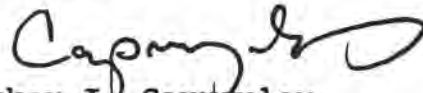
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It is further understood that it is the intention of the Government of the United States of America to include the joint and several obligation with respect to lend lease debt, once it becomes due, in the deferral of principal payments agreed to by seventeen bilateral of the former Soviet Union on January 4, 1992, and extended on March 31, 1992, and in any multilateral action on debt of the former Soviet Union taken subsequent to this deferral.

I have the further honor to propose that, if the foregoing is acceptable, this letter and your affirmative letter in reply shall constitute an agreement between the United States of America and the Republic of Kyrgyzstan.

I have the further honor to confirm that my Government accepts the foregoing proposal and that your letter and this letter in reply constitute an agreement between the Republic of Kyrgyzstan and the United States of America.

Sincerely,

A handwritten signature in black ink, appearing to read 'Askar I. Sarygulov', with a stylized flourish at the end.

Askar I. Sarygulov
Chairman
State Committee for
Foreign Economic Relations
Republic of Kyrgyzstan

Washington, May 8, 1992

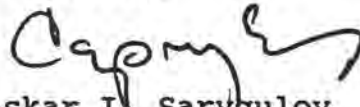
Dear Madam Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations between the Republic of Kyrgyzstan and the United States of America (the "Agreement"), I have the honor to confirm the understanding reached by our Government as follows:

1. Kyrgyzstan intends in the near future to accede to the Convention Establishing the Customs Co-operation Council.
2. Beginning from January 1, 1991 the Harmonized Commodity Description and Coding System shall be implemented in Kyrgyzstan.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Askar I. Sarygulov
Chairman
State Committee for
Foreign Economic Relations
Republic of Kyrgyzstan

The Honorable Carla A. Hills
United States Trade Representative
United States of America

Washington, May 8, 1992

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I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,



Carla A. Hills
United States Trade
Representative
United States of America

The Honorable Askar I. Sarygulov
Chairman
State Committee for
Foreign Economic Relations
Republic of Kyrgyzstan

Washington, May 8, 1992

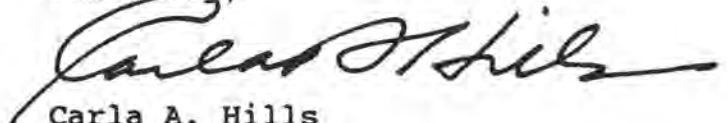
Dear Mr. Chairman:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Republic of Kyrgyzstan (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") as follows:

1. The Parties recognize that trade in textiles and textile products is generally governed by separate arrangements.
2. The provisions of paragraph 2 of Article I of the Agreement (quantitative restrictions) shall not apply to trade in textiles and textile products.
3. The elaboration of the market disruption safeguard provisions in Article XI of the Agreement (market disruption) is without prejudice to the right of either Party to apply any of its laws and regulations applicable to trade in textiles and textile products.
4. Nothing in this side letter or in the Agreement limits the application of any existing or future agreement between the Parties on trade in textiles and textile products.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Carla A. Hills
United States
Trade Representative
United States of America

The Honorable Askar I. Sarygulov
Chairman
State Committee for
Foreign Economic Relations
Republic of Kyrgyzstan

Washington, May 8, 1992

Dear Madam Ambassador:

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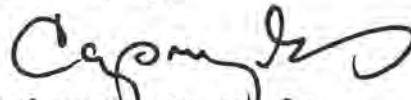
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Askar I. Sarygulov
Chairman
State Committee for
Foreign Economic Relations
Republic of Kyrgyzstan

The Honorable Carla A. Hills
United States Trade Representative
United States of America

Washington, May 8, 1992

Dear Mr. Chairman:

In connection with the signing on this date of the Agreement on Trade Relations Between the United States of America and the Republic of Kyrgyzstan (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

With respect to paragraph 3 of Article VII of the Agreement, the Kyrgyz Party will give favorable consideration to requests by nationals and companies of the United States to open and maintain deposit accounts in local currency received in an authorized manner and to use such currency for local expenses in accordance with permission granted. Such permission shall remain in force irrespective of possible future Kyrgyz laws and regulations which would restrict conditions of the holding, use or deposit of Kyrgyz currency by foreign nationals or companies.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

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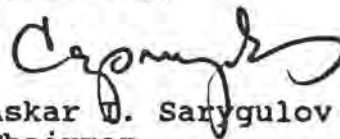
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Foreign Economic Relations
Republic of Kyrgyzstan

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United States of America

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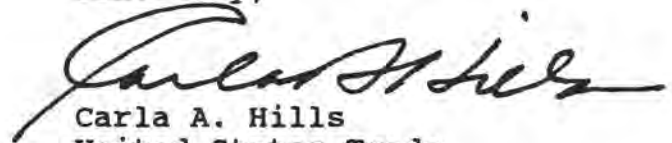
In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Republic of Kyrgyzstan (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

1. The Government of the United States will, during 1990, request that the United States Congress repeal the prohibition on the importation into the United States of gold coins from Kyrgyzstan and will take all possible measures to ensure the repeal of this prohibition by December 31, 1991.

2. Until such time as the prohibition is repealed, paragraphs 1, 2 and 3 of Article I of the Agreement shall not apply to the importation into the United States of America of gold coins.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Carla A. Hills
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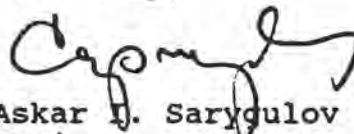
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Dear Mr. Chairman:

In connection with the signing on this date of the Agreement on Trade Relations between the United States of America and the Republic of Kyrgyzstan (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

1. In order to foster increased commercial activities and economic cooperation, the Government of the Republic of Kyrgyzstan and the Government of the United States of America (the "Parties") agree to undertake the following activities:

a. to encourage their respective nationals and companies to develop, publish and provide directly, directories of nationals and companies involved in foreign trade and their officers, as well as other information useful in contacting and evaluating potential business partners, and lists of government agencies and officers involved in foreign trade policy and regulation; and

b. to create favorable conditions for access to non-proprietary and non-confidential commercial information useful in evaluating potential business partners such as their financial reports, profit and loss statements, and experience in foreign trade.

2. Noting the particular needs of small and medium-sized enterprises in expanding trade, the Parties agree to pay attention to and provide appropriate support for small and medium-sized enterprises by promoting business cooperation networks which facilitate the search for business partners, access to publications and data bases, and information on the availability of technical innovations.

3. Any commercial representation designated as a foreign mission is not guaranteed the rights provided for in Article V of the Agreement.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

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Carla A. Hills
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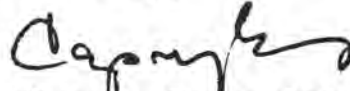
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Sincerely,



Askar I. Sarygulov
Chairman
State Committee for
Foreign Economic Relations
Republic of Kyrgyzstan

Washington, May 8, 1992

Dear Mr. Chairman:

In connection with the signing on this date of the Agreement on Trade Relations Between the United States of America and the Republic of Kyrgyzstan (the "Agreement"), I have the honor to confirm the understanding reached by our Governments (the "Parties") regarding cooperation in the field of tourism services as follows:

1. Both Parties shall facilitate the expansion of tourism between the United States and Kyrgyzstan and encourage the adoption of measures by tourist organizations and companies of both countries to satisfy the desire of tourists to learn about the lifestyles, achievements and culture of each country.
2. Taking into account the great significance of tourism in establishing mutual understanding between the peoples of the United States and Kyrgyzstan, and also the growth of its role in the development of economic cooperation between the two countries, the Parties agree to conclude a separate bilateral agreement on tourism.

Official Tourism Promotion Offices

1. Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory.
2. Permission to open tourism promotion offices or field offices, and the status of personnel who head and staff such offices, shall be as agreed upon by the Parties, and subject to the applicable laws and regulations of the host country.
3. Tourism promotion offices opened by either Party shall be operated on a non-commercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with travel agents or tour operators of the host country.
4. Official governmental tourism offices shall exercise activities, related to the facilitation of development of tourism between the United States and Kyrgyzstan, including:

The Honorable Askar I. Sarygulov
Chairman
State Committee for
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- a) providing information about the tourist facilities and attractions in their respective countries to the public, the travel trade, and the media;
- b) conducting meetings and workshops for representatives of the travel industry;
- c) participating in trade shows;
- d) distributing advertising materials such as posters, brochures and slides, and also coordinating advertising campaigns; and
- e) performing tourism market research.

5. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

Commercial Tourism Enterprises

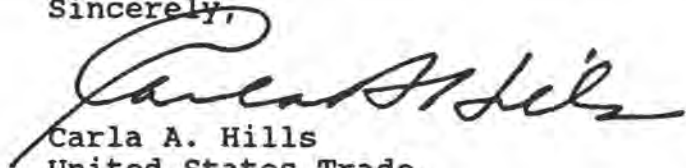
1. Commercial tourism enterprises, whether privately or governmentally-owned, or branches thereof shall be treated as private commercial enterprises, fully subject to all applicable laws and regulations of the host country.

2. Each Party shall ensure within the scope of its legal authority and in accordance with its laws and regulations that any company owned, controlled or administered by that Party or any joint venture therewith or any private company or joint venture between private companies, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party on a fair and equitable basis.

Nothing in this letter or in the Agreement shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

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Carla A. Hills
United States Trade Representative
United States of America

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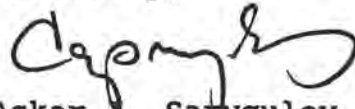
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Askar I. Sarygulov
Chairman
State Committee for
Foreign Economic Relations
Republic of Kyrgyzstan

Washington, May 8, 1992

Dear Mr. Chairman:

In connection with the Agreement on Trade Relations Between the United States of America and the Republic of Kyrgyzstan ("Agreement") to be signed today, I have the honor to confirm the understanding reached by our Governments as follows:

Upon the extension of most-favored-nation treatment by the United States of America to the Republic of Kyrgyzstan in accordance with the terms of said Agreement, and after the date on which a note from the Government of the United States of America is delivered to the Government of the Republic of Kyrgyzstan stating that the Government of the United States has, accordingly, made available most-favored-nation treatment for the Republic of Kyrgyzstan no less favorable than that provided in an Agreement between the Governments of the United States of America and the Union of Soviet Socialist Republics Regarding Trade signed on October 18, 1972, the balance of \$674,000,000 in payment of lend lease accounts shall become due, and shall be paid, in accordance with the terms of the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Settlement of Lend Lease, Reciprocal Aid and Claims, signed October 18, 1972.

The Government of the United States of America undertakes not to deliver the diplomatic note referred to above until export credits, guarantees and insurance through the Export-Import Bank and other similar credits for the purchase of American goods are available to the Republic of Kyrgyzstan on terms appropriate to the transactions, in accordance with the exchange of letters between Mr. Willis C. Armstrong and Mr. V. Alkhimov dated May 15, 1972.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,



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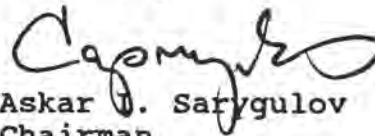
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United States Trade Representative
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Washington, May 8, 1992

Dear Madam Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations between the Republic of Kyrgyzstan and the United States of America (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

The Government of Kyrgyzstan in 1993 will introduce for examination by the Kyrgyz legislature drafts of the legislative acts of Kyrgyzstan governing relations on the creation and use of inventions and discoveries, scientific, literary and artistic works as well as other objects of intellectual property, which by virtue of their content will create conditions for Kyrgyz participation in the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention").

The Government of Kyrgyzstan will introduce in 1993 the draft laws necessary to fulfill the obligations contained in Article VIII of the Agreement and will undertake all possible measures to enact these laws during 1993. The Government of Kyrgyzstan will seek prompt implementation of these laws.

To fulfill the obligations under paragraphs 4 and 5 of Article VIII of the Agreement, the Government of Kyrgyzstan undertakes the following:

I. The Government of Kyrgyzstan shall incorporate the following principles in its legislative proposals on intellectual property:

The Honorable Carla A. Hills
States Trade Representative
United States of America

COPYRIGHT PROTECTION FOR COMPUTER SOFTWARE

1. Copyright protection for computer programs shall extend to all types of computer programs including application programs and operating systems which may be expressed in any language, whether in source or object code and regardless of their medium of fixation.

2. The duration and level of protection for computer programs shall be consistent with that provided to other literary works.

3. Limitations on rights expressly permitted to apply to literary works under the Paris Act of the Berne Convention shall also be made applicable to computer programs. In addition, owners of a copy of a computer program shall be provided the right:

(3.1) to make or authorize the making of a single copy or adaptation of that computer program provided:

(3.1.1) that such new copy or adaptation is created as an essential step in the utilization of the computer program -- in conjunction with a machine and that it is used in no other manner, or

(3.1.2) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed -- in the event that continued possession of the computer program should cease to be rightful.

PROTECTION AGAINST UNFAIR COMPETITION, INCLUDING PROTECTION OF TRADE SECRETS

1. Protection against unfair competition will be implemented in accordance with the provisions of Article 10bis and Article 10ter of the Paris Convention for the Protection of Industrial Property.

2. Trade secrets include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the owner's business and has actual or potential economic value from not being generally known.

3. A trade secret shall be protected whether such trade secret is of a technical or commercial nature, provided that it:

(3.1) has actual or potential commercial value from not being known to the relevant public;

(3.2) is not readily accessible in a lawful manner; and

(3.3) has been subject to appropriate measures to keep it secret.

The trade secret shall be protected as long as these conditions exist.

4. The appropriation, disclosure, and use of a trade secret without the consent of the owner shall be unlawful.

5. Efforts to commercially exploit the trade secret shall not be hindered or impeded by imposing excessive or discriminatory conditions or conditions that dilute the value of the trade secret.

II. The Government of Kyrgyzstan shall provide for a review of the following issues concerning protection of sound recordings:

1. The Government of Kyrgyzstan commits to review the question of including in the appropriate draft legislation which must be presented to the legislature of Kyrgyzstan in 1993, a provision to provide to producers of sound recordings, a term of protection for fifty (50) years from the date of first publication of the sound recording.

2. Recognizing that the United States adheres to the Geneva Phonograms Convention, the Government of Kyrgyzstan commits to review immediately after enactment of sound recording protection, its adherence to that Convention.

III. The Government of Kyrgyzstan shall provide for a review of protection for inventions, as follows:

1. The Government of Kyrgyzstan undertakes to examine any draft patent law and consider possible submission of proposals in light of international intellectual property rights agreements.

2. The Government of Kyrgyzstan and the Government of the United States agree to seek mutually acceptable provisions on compulsory licensing of patents in the working group provided for in paragraph 5 of Article VIII of the Agreement. Both sides will present proposals on provisions for compulsory licensing that will be fully considered by the working group including the following:

(2.1) A compulsory license to supply domestic needs may be given if:

(2.1.1) the license only permits local making of the patented invention;

(2.1.2) the license is granted to one qualified to make the invention;

(2.1.3) those seeking the license show that the combination of manufacture, use and importation of the patented invention has

not satisfied the basic needs of the local market by the expiration of a period of five years from the date of the grant of the patent;

(2.1.4) those seeking the license show that the patent owner has refused to grant a voluntary license on terms in line with normal commercial practices;

(2.1.5) the patent owner does not show that his inaction is justified by the existence of legal, technical or commercial reasons;

(2.1.6) the patent owner receives reasonable and equitable compensation for the license;

(2.1.7) the license is nonexclusive;

(2.1.8) the license will be non-assignable except with that part of the enterprise or goodwill which exploits such a license;

(2.1.9) the license does not significantly prejudice the economic interests of the patent owner;

(2.1.10) the license does not create trade distortions; and

(2.1.11) decisions to grant a compulsory license and the terms of the license are made by a court and can be appealed and reviewed in accordance with national law;

(2.2) Kyrgyzstan will grant no other compulsory licenses; and

(2.3) A patent shall not be revoked except for invalidity.

Negotiations on these provisions must be concluded during 1993. The agreed provisions shall be an integral part of the Agreement.

IV. The Government of Kyrgyzstan shall establish with the Government of the United States a working group on intellectual property matters. This working group will address the following topics:

1. The exchange of information and cooperation among authorities responsible for the protection of intellectual property;
2. The implementation of intellectual property laws;
3. The review of international trends in the protection of intellectual property rights in the context of international economic and trade relations;
4. The protection of integrated circuit layout designs;

5. The protection for products that

(5.1) were not patentable subject matter in Kyrgyzstan before the effective date of the new Kyrgyz law on inventions; and

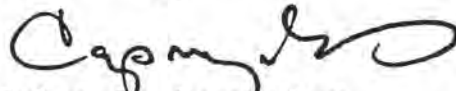
(5.2) that were the subject of patents in the United States or other countries that were based on applications filed before the effective date of the new Kyrgyz law on inventions.

During these consultations, specifics of this protection including, inter alia, the term and coverage will be considered; and

6. The government use of patented inventions.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,



Askar I. Sarygulov
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Dear Madam Ambassador:

In connection with the signing on this date of the Agreement on Trade Relations between the Republic of Kyrgyzstan and the United States of America (the "Agreement"), I have the honor to confirm the understanding reached by our Governments as follows:

The Government of Kyrgyzstan in 1993 will introduce for examination by the Kyrgyz legislature drafts of the legislative acts of Kyrgyzstan governing relations on the creation and use of inventions and discoveries, scientific, literary and artistic works as well as other objects of intellectual property, which by virtue of their content will create conditions for Kyrgyz participation in the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention").

The Government of Kyrgyzstan will introduce in 1993 the draft laws necessary to fulfill the obligations contained in Article VIII of the Agreement and will undertake all possible measures to enact these laws during 1993. The Government of Kyrgyzstan will seek prompt implementation of these laws.

To fulfill the obligations under paragraphs 4 and 5 of Article VIII of the Agreement, the Government of Kyrgyzstan undertakes the following:

I. The Government of Kyrgyzstan shall incorporate the following principles in its legislative proposals on intellectual property:

The Honorable Askar I. Sarygulov
Chairman
State Committee for
Foreign Economic Relations
Republic of Kyrgyzstan

COPYRIGHT PROTECTION FOR COMPUTER SOFTWARE

1. Copyright protection for computer programs shall extend to all types of computer programs including application programs and operating systems which may be expressed in any language, whether in source or object code and regardless of their medium of fixation.

2. The duration and level of protection for computer programs shall be consistent with that provided to other literary works.

3. Limitations on rights expressly permitted to apply to literary works under the Paris Act of the Berne Convention shall also be made applicable to computer programs. In addition, owners of a copy of a computer program shall be provided the right:

(3.1) to make or authorize the making of a single copy or adaptation of that computer program provided:

(3.1.1) that such new copy or adaptation is created as an essential step in the utilization of the computer program -- in conjunction with a machine and that it is used in no other manner, or

(3.1.2) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed -- in the event that continued possession of the computer program should cease to be rightful.

PROTECTION AGAINST UNFAIR COMPETITION, INCLUDING PROTECTION OF TRADE SECRETS

1. Protection against unfair competition will be implemented in accordance with the provisions of Article 10~~bis~~ and Article 10~~ter~~ of the Paris Convention for the Protection of Industrial Property.

2. Trade secrets include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the owner's business and has actual or potential economic value from not being generally known.

3. A trade secret shall be protected whether such trade secret is of a technical or commercial nature, provided that it:

(3.1) has actual or potential commercial value from not being known to the relevant public;

(3.2) is not readily accessible in a lawful manner; and

(3.3) has been subject to appropriate measures to keep it secret.

The trade secret shall be protected as long as these conditions exist.

4. The appropriation, disclosure, and use of a trade secret without the consent of the owner shall be unlawful.

5. Efforts to commercially exploit the trade secret shall not be hindered or impeded by imposing excessive or discriminatory conditions or conditions that dilute the value of the trade secret.

II. The Government of Kyrgyzstan shall provide for a review of the following issues concerning protection of sound recordings:

1. The Government of Kyrgyzstan commits to review the question of including in the appropriate draft legislation which must be presented to the legislature of Kyrgyzstan in 1993, a provision to provide to producers of sound recordings, a term of protection for fifty (50) years from the date of first publication of the sound recording.

2. Recognizing that the United States adheres to the Geneva Phonograms Convention, the Government of Kyrgyzstan commits to review immediately after enactment of sound recording protection, its adherence to that Convention.

III. The Government of Kyrgyzstan shall provide for a review of protection for inventions, as follows:

1. The Government of Kyrgyzstan undertakes to examine any draft patent law and consider possible submission of proposals in light of international intellectual property rights agreements.

2. The Government of Kyrgyzstan and the Government of the United States agree to seek mutually acceptable provisions on compulsory licensing of patents in the working group provided for in paragraph 5 of Article VIII of the Agreement. Both sides will present proposals on provisions for compulsory licensing that will be fully considered by the working group including the following:

(2.1) A compulsory license to supply domestic needs may be given if:

(2.1.1) the license only permits local making of the patented invention;

(2.1.2) the license is granted to one qualified to make the invention;

(2.1.3) those seeking the license show that the combination of manufacture, use and importation of the patented invention has not satisfied the basic needs of the local market by the expiration of a period of five years from the date of the grant of the patent;

(2.1.4) those seeking the license show that the patent owner has refused to grant a voluntary license on terms in line with normal commercial practices;

(2.1.5) the patent owner does not show that his inaction is justified by the existence of legal, technical or commercial reasons;

(2.1.6) the patent owner receives reasonable and equitable compensation for the license;

(2.1.7) the license is nonexclusive;

(2.1.8) the license will be non-assignable except with that part of the enterprise or goodwill which exploits such a license;

(2.1.9) the license does not significantly prejudice the economic interests of the patent owner;

(2.1.10) the license does not create trade distortions; and

(2.1.11) decisions to grant a compulsory license and the terms of the license are made by a court and can be appealed and reviewed in accordance with national law;

(2.2) Kyrgyzstan will grant no other compulsory licenses; and

(2.3) A patent shall not be revoked except for invalidity.

Negotiations on these provisions must be concluded during 1993. The agreed provisions shall be an integral part of the Agreement.

IV. The Government of Kyrgyzstan shall establish with the Government of the United States a working group on intellectual property matters. This working group will address the following topics:

1. The exchange of information and cooperation among authorities responsible for the protection of intellectual property;
2. The implementation of intellectual property laws;

3. The review of international trends in the protection of intellectual property rights in the context of international economic and trade relations;

4. The protection of integrated circuit layout designs;

5. The protection for products that

(5.1) were not patentable subject matter in Kyrgyzstan before the effective date of the new Kyrgyz law on inventions; and

(5.2) that were the subject of patents in the United States or other countries that were based on applications filed before the effective date of the new Kyrgyz law on inventions.

During these consultations, specifics of this protection including, inter alia, the term and coverage will be considered; and

6. The government use of patented inventions.

I have the further honor to propose that this understanding be treated as an integral part of the Agreement. I would be grateful if you would confirm that this understanding is shared by your Government.

I have the further honor to confirm that the foregoing understanding is shared by my Government and constitutes an integral part of the Agreement.

Sincerely,



Carla A. Hills
United States Trade
Representative
United States of America