THE 1st GNLU INTERNATIONAL MOOT COURT COMPETITION, 2009

INTERNATIONAL COURT OF JUSTICE

COMPROMIS

BETWEEN

THE REPUBLIC OF ANDRENA (APPLICANT)

AND

THE STATE OF RUBENA (RESPONDENT)

TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE
THE DIFFERENCES BETWEEN THE STATES
ARISING OUT OF ANDRENA-RUBENA FREE TRADE AGREEMENT

JOINT NOTIFICATION

To

The Registrar

International Court of Justice

The Hague, The Netherlands

The Hague, 17 September 2008

Your Excellency,

Compliments.

On behalf of the Republic of Andrena ("the Applicant") and the State of Rubena ("the Respondent"), in compliance with Article 40(1) of the Statute of the International Court of Justice, it is our privilege to present to you an original of the Compromis for Submission to the International Court of Justice of the Differences between the Applicant and the Respondent arising out of Andrena-Rubena Free Trade Agreement, signed in Geneva, on September 15, 2008.

Highest consideration,

Ambassadors of the Republic of Andrena and the State of Rubena

COMPROMIS

THE REPUBLIC OF ANDRENA V. THE STATE OF RUBENA

The Case Concerning Andrena-Rubena Free Trade Agreement

1. The Republic of Andrena (hereafter ***the Applicant***) and the State of Rubena (hereafter ***the Respondent***) are representative democracies with elected legislatures and independent judiciaries. The countries are approximately equal in geographic area, and according to the most recent available census data, the population of Andrena is ten million, and the population of Rubena is three hundred million.

2. According to the UN Statistical Bureau, the average annual per capita income of Andrena is approximately US$ 32,000 while that of Rubena is US$ 3,000; the literacy rate of Andrena is 98%, while 63% of adult Rubenans are able to read and write; and the average life expectancies of male and female in Andrena is 70.5 and 81 years, respectively, while those in Rubena is 66 and 71 years.

3. Shortly after the independence of Rubena in the year 1958, a movement emerged calling itself the Scientific and Language Advancement Society (SLAS). By all accounts, SLAS was created as a social and civic organization, which sponsored the study of English language and fundamental sciences, and supported hospitals, schools, and old-age homes. As a result of the efforts by the SLAS and the support of various governmental agencies Rubena has an English speaking population of 6 million. Even though initially Rubena lacked proper infrastructure, over the years as a result of tax concessions accorded by the government coupled with the availability of low cost labour, Rubena emerged as a favorite destination for outsourcing. As of 2008, the contribution of outsourcing activities to the GDP of Rubena was 27%.

4. Recognizing the growing importance of outsourcing activities to the GDP of Rubena, the government proceeded to take steps to ensure that it emerged as a safe harbor for information transmitted in any form to an organization engaged in outsourcing activity in Rubena. In pursuance of this objective, Rubena passed the Rubena Outsourcing

Activity Act (ROAA). ROAA authorized the setting up of an Outsourcing Activity Protection Agency (OAPA). OAPA comprises a dedicated staff authorized to conduct periodic and surprise checks to ensure that the organizations engaged in outsourcing activities meet the highest standards of confidentiality of client information.

5. As a result, a significant number of companies based in Andrena outsourced their back office work to Rubenan companies. Stanley Brothers Inc. (SBI) is one such company engaged in the financial sector having credit card operations across the globe. Pursuant to the Andrena-Rubena Free Trade Agreement (ARFTA) coming into force on 1st January 1999, it entered into a contract with Infotex Public Ltd. (IPL) based in Rubena on 26 February 2000. The agreement entails the exchange of confidential information from SBI to IPL. IPL fully met the security and privacy norms of SBI, prior to entering into the agreement since IPL had entered into such contracts with other companies located in third countries. Mr. Ankyo Yuzhei, the CEO of SBI, remarked in the Annual Shareholders Conference:

   "We are more than happy with the security arrangements at IPL. I for instance have absolutely no doubt in mind that the information we outsource to IPL is more secure than any other company engaged in similar business in Rubena."

6. Over the years, due to economic slowdown, there were significant job losses in Andrena. On at least eight occasions between 2001 and 2008, the Andrenian Senate adopted resolutions regarding falling employment rates in Andrena and expressed their opposition to outsourcing of back office work to Rubena. Outsourcing became a national issue in the Presidential election held in the year 2006 pursuant to which Nationalist Democratic Party (NDP), a hardliner against outsourcing, came into power. However, since the NDP did not have majority support in the Senate, their efforts to pass legislation curtailing outsourcing were unsuccessful.

7. In March 2007, Andrena Times reported that between March 2006 to September 2006 sensitive client information was stolen from Protech BPO, a back office support company based in Rubena receiving outsourced work from credit card companies based

in Andrena. The newspaper report created a furor in Andrena with wide spread demand for stricter regulation of outsourced information.

8. Meanwhile certain by-elections were held in south-east regions of Andrena for the fifteen vacated seats of the Senate. It is noteworthy that the south-east region was the most affected region of Andrena due to outsourcing activities. The NDP recorded a landslide victory and also secured the majority in the Senate.

9. Pursuant to the newspaper reports certain class action law suits were filed in the High Court of South East Andrena for recovery of damages for breach of right of privacy in which the SBI, IPL and all the other companies engaged in such activities were named as respondents. The High Court refused the motion to dismiss the complaints and ordered for discovery of documents pursuant of which summons were issued to certain Rubenan companies including IPL. The High Court imposed a fine of US$ 1,000,000 on IPL. IPL has filed an appeal before the Supreme Court of Andrena against the decision on the ground of remoteness of damages since there is no concrete evidence against IPL and evidence, if any, is only available against Protech. The appeal is pending till date.

10. In September 2007, the Andrenian Senate adopted the Andrena Secure Information Systems Act (ASISA) and also bought suitable changes in the Export Administration Regulations of Andrena (AEAR). The legislation mandates that any Andrenian company engaged in outsourcing of confidential information to any third party including foreign third party must do so only if that third party uses proprietary software called Secure Information System (based on 128 bit encryption) or any system based on similar technology. It is noteworthy that under the AEAR, export of dual use technology like 128 bit encryption is prohibited unless made under a special permit granted by the Department of Export Administration. The Secure Information System was a sophisticated information processing application commanding a license fee of US$ 64,000 per user.

11. After numerous unsuccessful attempts by SBI to obtain the license to export such technology to Rubena and an equal number of unsuccessful negotiations by IPL to obtain such technology from Andrena and the rest of the world at a reasonable price, SBI terminated the contract with IPL on September 13, 2007. The termination of this contract resulted in a political turmoil in Rubena since it resulted in immediate job loss of 20,000 personnel and the potential job loss was estimated to the order of 600,000 persons.

12. The next day, on September 14, 2007, the government of Rubena summoned the Andrenian Ambassador, and delivered to him a *demarche* that demanded, in light of the events of the last one month, the immediate repeal of the Andrena Secure Information Systems Act (ASISA) and intervention of the Government of Andrena in the appeal filed by IPL before the Court. Andrena did not protest, and re-invited all former contracting companies to apply for a licence for the transfer of technology. However till this date not even a single Andrenian company has received licence to export such technology.

13. Rubena requested for consultations with Andrena under the ARFTA which were held in January 2008. The parties could not reach a mutually satisfactory solution.

14. In March 2008, Rubenan Parliament retaliated by enacting the Rubena Public Health & Safety Act (RPHSA). The Statement of Objects and Reasons of the Act stated that the law is being enacted in public interest and imposed one hundred & fifty percent custom duties on wine and spirits and seventy five percent custom duties on heavy water manufacturing equipment and nuclear fuel processing equipment imported into Rubena. It is an acknowledged fact duly supported by import statistics that ninety seven percent of imports into Rubena of the above goods were from Andrena. The heavy water manufacturing equipment and nuclear fuel processing equipment were exported under a special legislation passed by the Andrena Assembly.

15. On 15 April 2008, the government of Andrena sent a diplomatic note to Rubena, formally protesting the enactment of RPHSA and demanding immediate repeal of the same. When Rubena declined to provide a response, the Andrenan government recalled its Ambassador from Rubena and declared the Rubenan Ambassador resident in Andrena *persona non grata*.

16. Andrena has always been beset with a problem of minorities which have clamored for better treatment, equal opportunity with the majority community, and better economic deal. One of these is a Rubenan community, which has been most militant. Economically backward, this community has been vociferous in demanding equal status with the rest of the people. Its leaders complain of oppression and accuse Andrena's Police force of always targeting their community for any law and order problem, or even for almost every crime committed in the country. This group could fall easy prey to any incitement to violence from Rubena. There are Rubenan leaders with dubious links with this community. The current turmoil in the relations between Andrena and Rubena provided a fertile ground for the germination of terrorism in this community.

17. On April 20, 2008 Mr. Rafid a retired intelligence agency officer of Andrena, who was later apprehended to be a counter intelligence spy of Rubena with a personal hatred for the State of Andrena (as he belonged to the Rubenan community in Andrena), along with a few men of his community entered the premises of IPL and Protech within the period of the same day. On the basis of a forged identity card he identified himself as a member of OAPA giving him access to a lot of sensitive client information of organizations based in Andrena. Mr. Rafid, after illegally downloading this data from the system in IPL and Protech threatened to release this data in the international market. Andrena sent a note verbale to Rubena to apprehend and stop such breach of privacy and arrest Rafid who was then believed to have sought political asylum in Rubena.

18. Rubena refused to act stating in its response that it had no knowledge of any such breach of privacy, or of Rafid's presence in Rubena and that it completely denied any

involvement of the government or any of its officials in the whole incident. It argued that whatever was happening was Andrena's internal problem, and that no link between the incident and anyone in Rubena has been proved. The stolen data was eventually released in the international market. Andrenan citizens sued (in Andrena) SBI & IPL and claimed damages for breach of privacy and the suits are pending. SBI sued IPL in Rubena for breach of contract and confidentiality clauses. This suit was dismissed on account of remoteness of damages (i.e. the direct cause of loss in business was not established since the consumers might have shifted because of high cost of SBI). Later there was extensive reporting by Andrena Times about internet credit card theft from Andrenian Citizens (former and present customers of SBI). However, it was subsequently found in a confidential inquiry by Rubena that Rafid had exchanged certain e-mails and documents with the intelligence agency in Rubena just before the incident of security breach. However, these findings and the contents of these e-mails and documents were never authenticated or made public.

19. In early August, responding to the increasing tensions generated by these incidents, Andrena and Rubena suspended trade relations and both countries dispatched several thousand troops to the vicinity of their shared border. Andrena sent a few drones into the border areas of Rubena in search of Rafiq. Some of the drones did send down a few missiles which hit two villages killing some 152 peoples and injuring 300. One of them hit and destroyed a 700 year old temple, declared by the UNESCO as a World Heritage. And Rubena promptly shot down these drones and appealed to the UN Security Council. At the conclusion of an emergency session of the Security Council, the President of the Council issued a statement, dated 20 August 2008, reminding the two nations of the goodwill enjoyed by both among the members of the Council. He said that it was the firm view of the Council that both parties to the conflict should cease and desist forthwith, and withdraw immediately their respective troops to their *status quo ante* position. He further reminded both the parties that the Council was in a mood to authorize firmer measures that might have significant and unintended consequences, if the two parties failed to comply with the Council's decision, and if fail to agree to resolve

the situation peacefully by submitting their dispute to the International Court of Justice for adjudication.

20. In compliance with the decision of the Council, on 23 August 2008, Andrena and Rubena agreed to submit the case before the International Court of Justice and a little later, on this day, 17 September 2008, submitted this Compromis to the Court as a stipulation of the facts and issues to be adjudicated by the Court.. The countries agreed that Andrena would appear before the Court as Applicant and Rubena as Respondent, and that both would act in accordance with the findings and conclusions of the Court.

21. On 18 September 2008, the crack code for Secure Information System was posted on one of the Rubenan websites. A detailed analysis allegedly done by the Department of Homeland Security of Andrena regarding the deficiency in the Secure Information System is also available for download from the same website. Rubena seeks to rely on the same to argue that the ASISA is a technical barrier to trade and is in violation of the market access commitments of Andrena. Andrena challenges the findings of the analysis and also questions the evidentiary value of the same on the ground whether unverified & fresh evidence not subject to consultations can be considered by the ICJ.

22. At all relevant times, Andrena and Rubena have been members of the United Nations and parties to the Statute of the International Court of Justice, though neither has accepted the Court's compulsory jurisdiction. Since becoming independent states, both have also signed and ratified the 1969 Vienna Convention on the Law of Treaties, the 1966 International Covenant on Civil and Political Rights, and any other international treaty which may have any significant bearing on this case. Andrena and Rubena are founder members of the World Trade Organisation (WTO).

23. Both the parties have mutually agreed to the following issues to be presented to the International Court of Justice for adjudication:

1. Preliminary objections.
2. Claims relating to breach of privacy and data protection.
3. Claims relating to breach of ARFTA.
4. Claims relating to breach of the principle of prohibition of use of force or other violations of international law.
5. Claims relating to damages or any other appropriate remedies for each of the above groups of claims.

ANNEXURE

FREE TRADE AGREEMENT

The Government of the Republics of Andrena ("Andrena") and the Government of the Republic of Rubena ("Rubena"),

Desiring to strengthen the bonds of friendship and economic relations and cooperation between them;

Wishing to establish clear and mutually advantageous rules governing their trade; Aspiring to promote their mutual interest through liberalization and expansion of trade between their countries;

Reaffirming their willingness to strengthen and reinforce the multilateral and bilateral trading system, and to contribute to regional and international cooperation;
Recognizing that Rubena's economy is still in a state of development and faces special challenges;

Recognizing the objective of sustainable development, and seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development;

Recognizing that their relations in the field of trade and economic activity should be conducted with a view to raising living standards and promoting economic growth, investment opportunities, development, prosperity, employment and the optimal use of resources in their territories;

Desiring to foster creativity and innovation and promote trade in goods and services that are the subject of intellectual property rights;
Recognizing the need to raise public awareness of the challenges and opportunities offered by trade liberalization;

Wishing to raise the capacity and international competitiveness of their goods and services;

Desiring to promote higher labor standards by building on their respective international commitments and strengthening their cooperation on labor matters; and

Wishing to promote effective enforcement of their respective environmental and labor law;

Have Agreed as Follows

ARTICLE 1: ESTABLISHMENT OF A FREE TRADE AREA AND RELATIONSHIP TO OTHER AGREEMENTS

1. The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article V of the General Agreement on Trade in Services ("GATS"), hereby establish a free trade area in accordance with the provisions of this Agreement.

2. The Parties reaffirm their respective rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement").

3. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that entitles a good or service, or the supplier of a good or service, to treatment more favorable than that accorded by this Agreement.

4. Nothing in Article 17 shall be construed to authorize a Party to apply a measure that is inconsistent with the Party's obligations under the WTO Agreement.

ARTICLE 2: TRADE IN GOODS

1. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with Annex 2.1 and its schedule[1] to Annex 2.1.

2. For purposes of this Agreement, originating good means an article described in Annex 2.2.

3. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, subject to Annex 2.3.

4. A Party may not introduce a new customs duty on imports or a new quantitative restriction on imports in the trade between the Parties, other than as permitted by this Agreement, subject to Annex 2.3.

5. In the event that this Agreement enters into force on a date other than January 1, "year one" for purposes of Annex 2.1 and each Party's schedule to Annex 2.1 shall mean the period from the date of entry into force of this Agreement through the end of the calendar year, and the duty reductions in each Party's schedule to Annex 2.1 shall take effect on such date of entry into force. In such event, the term "January 1 of

[1] For purposes of this Agreement, "schedule" shall include both the schedule and headnotes

year one" for purposes of Annex 2.1 and each Party's schedule to Annex 2.1 shall mean the date of entry into force of this Agreement.

ARTICLE 3: TRADE IN SERVICES

1. This Article applies to measures by a Party affecting trade in services between the Parties.

2.

(a) With respect to market access through the modes of supply identified in Article I of the GATS, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations, and conditions agreed and specified in its Services Schedule to Annex 3.1 to this Agreement. In sectors where such market access commitments are undertaken, the measure which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Services Schedule to Annex 3.1, are those measures defined in Article XVI:2(a)-(f) of the GATS.

(b) In the sectors inscribed in its Services Schedule to Annex 3.1, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.

(c)

(i) Subject to subparagraph (c)(ii), any market access or national treatment commitment inscribed in a Party's Services Schedule to Annex 3.1 shall give rise to the same rights and obligations[2] between the Parties as if that commitment had been inscribed in that Party's schedule of specific commitments annexed to the GATS.[3]

(ii) The provisions of GATS that shall be construed to give rise to rights and obligations under this Article are: Articles IIIbis; VI:1, 2, 3, 5, 6; VII:1 & 2; VIII:1, 2, 5; IX; XI; XII; XIII:1; XIV; XV:2; XVI; XVII; XVIII; XX:2; and XXVII; Annex on Movement of Natural Persons Supplying Services under the Agreement; Annex on Financial Services; Annex on Air Transport, paragraphs 1, 2, 3, 4, 6; and Annex on Telecommunications, paragraphs 1-5.

[2] Nothing in this Article shall require a Party to take any action with regard to the WTO or a Council, Committee, Body, or the Ministerial Conference of the WTO.

[3] The Parties acknowledge and accept that the commitments of the Andrena in financial services in subparagraphs 2(a) and 2(b) have been undertaken in accordance with the WTO Understanding on Commitments in Financial Services subject to the limitations and conditions set forth in the schedule of the Andrena.

3. Rubena has listed, in its schedule annexed to the GATS, exemptions from most-favored-nation treatment that are based on a reciprocity requirement. Rubena confirms that the Andrena satisfies those reciprocity requirements specified in Annex 3.2.

4.

(a) Unless they are specifically defined in this Article or in the Services Schedules to Annex 3.1, terms used in this Article and such Services Schedules that are also used in the GATS shall be construed in accordance with their meaning in the GATS, mutatis mutandis.

(b) All references in this Article to the GATS are to the GATS in effect on the date of entry into force of this Agreement. If, after that date, a Party alters its schedule of specific commitments annexed to the GATS, the GATS is amended, or the results of the negotiations described in GATS Articles VI:4, X:1, XIII:2, or XV:1 enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties.

(c) Reference in this Article to a provision of the GATS includes any footnote to that provision.

ARTICLE 4: INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall, at a minimum, give effect to this Article, including the following provisions:

(a) Articles 1 through 6 of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization ("WIPO");

(b) Articles 1 through 22 of the International Convention for the Protection of New Varieties of Plants (1991) ("UPOV Convention");

(c) Articles 1 through 14 of the WIPO Copyright Treaty (1996) ("WCT")[4]; and

(d) Articles 1 through 23 of the WIPO Performances and Phonograms Treaty (1996) ("WPPT").[5]

[4] Articles 1(4) and 6(2) of the WCT shall be excepted from this Agreement. Such exception shall be without prejudice to each Party's respective rights and obligations under the WCT, the Berne Convention for the Protection of Literary and Artistic Works (1971) ("Berne Convention") and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS").

[5] Articles 5, 8(2), 12(2), and 15 of the WPPT shall be excepted from this Agreement. Such exception shall be without prejudice to each Party's respective rights and obligations under the WPPT, the Berne Convention and TRIPS

2. Each Party shall make best efforts to ratify or accede to the Patent Cooperation Treaty (1984) and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

3. Each Party shall accord to nationals of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection[6] and enjoyment of all intellectual property rights and any benefits derived therefrom, subject to the exceptions provided in this Article.

4. A Party may derogate from paragraph 3 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of the other Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner that would constitute a disguised restriction on trade.

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

Trademarks and Geographical Indications

6. Trademarks shall include service marks, collective marks and certification marks, [7]and may include geographical indications.[8]

7. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services which are related to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

8. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) ("Paris Convention") shall apply, mutatis mutandis, to goods or services which are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark

[6] For purposes of paragraphs 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as uses of intellectual property rights specifically covered by this Agreement

[7] Neither Party is obligated to treat certification marks as a separate category in national law, provided that such marks are protected.

[8] A geographical indication shall be considered a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good or service is essentially attributable to its geographical origin

and provided that the interests of the owner of the trademark are likely to be damaged by such use.

9. Neither Party shall require recordal of trademark licenses to establish the validity of the license or to assert any rights in a trademark.

Copyright and Related Rights

10. Each Party shall provide that all reproductions, whether temporary or permanent, shall be deemed reproductions and subject to the reproduction right as envisaged in the provisions embodied in WCT Article 1(4) and the Agreed Statement thereto, and WPPT Articles 7 and 11 and the Agreed Statement thereto.

11. Each Party shall provide to authors and their successors in interest, to performers and to producers of phonograms the exclusive right to authorize or prohibit the importation into each Party's territory of copies of works and phonograms, even where such copies were made with the authorization of the author, performer or producer of the phonogram or a successor in interest.

12. Each Party shall provide to performers and producers of phonograms the exclusive right to authorize or prohibit the broadcasting and communication to the public of their performances or phonograms, regardless of whether the broadcast or communication is effected by wired or wireless means, except that a Party may provide exemptions for analog transmissions and free over-the-air broadcasts, and may introduce statutory licenses for non-interactive services that, by virtue of their programming practices, including both the content of their transmissions and their use of technological measures to prevent unauthorized uses, are unlikely to conflict with a normal exploitation of phonograms or performances.

13. In applying the prohibition under Article 11 of the WCT and Article 18 of the WPPT on circumvention of effective technological measures that are used by authors, performers and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances and phonograms, each Party shall prohibit civilly and criminally the manufacture, importation or circulation of any technology, device, service or part thereof, that is designed, produced, performed or marketed for engaging in such prohibited conduct, or that has only a limited commercially significant purpose or use other than enabling or facilitating such conduct.[9]

14. Each Party shall provide that any natural person or legal entity acquiring or holding any economic rights by contract or otherwise, including contracts of employment involving protected subject matter, may freely and separately transfer such rights by

[9] This provision does not require either Party to mandate that any consumer electronics, telecommunications or computing product not otherwise violating the prohibition be designed to affirmatively respond to any effective technological measure. Any violation of the prohibition shall be independent of any infringement of copyright or related rights.

contract and shall be able to exercise those rights in its own name and enjoy fully benefits of such rights.

15. Each Party shall issue appropriate laws, regulations, or other measures ("measures") providing that all agencies government or otherwise use only computer software authorized for intended use. Such measures shall actively regulate the acquisition and management of software for government or private use.

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

Patents

17. Subject to paragraph 18, patents shall be available for any invention, whether product or process, in all fields of technology, provided that it is new, involves an inventive step and is capable of industrial application.

18. Each Party may exclude from patentability:

    (a) inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment provided that such exclusion is not made merely because the exploitation is prohibited by their law;

    (b) diagnostic, therapeutic and surgical methods for the treatment of humans or animals.

19. If a Party permits the use by a third party of a subsisting patent to support an application for marketing approval of a product, the Party shall provide that any product produced under this authority shall not be made, used or sold in the territory of the Party other than for purposes related to meeting requirements for marketing approval, and if export is permitted, the product shall only be exported outside the territory of the Party for purposes of meeting requirements for marketing approval in the Party or in another country that permits the use by a third party of a subsisting patent to support an application for marketing approval of a product.

20. Neither Party shall permit the use of the subject matter of a patent without the authorization of the right holder except in the following circumstances:

    (a) to remedy a practice determined after judicial or administrative process to be anti-competitive;

    (b) in cases of public non-commercial use or in the case of a national emergency or other circumstances of extreme urgency, provided that such use is limited to use

by government entities or legal entities acting under the authority of a government; or

(c) on the ground of failure to meet working requirements, provided that importation shall constitute working.

Where the law of a Party allows for such use pursuant to sub-paragraphs (a), (b) or (c), the Party shall respect the provisions of Article 31 of TRIPS and Article 5A(4) of the Paris Convention.

21. With regard to filing a patent application, when it is not possible to provide a sufficient written description of the invention to enable others skilled in the art to carry out the invention, each Party shall require a deposit with an "international depository authority," as defined in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980).

Measures Related to Certain Regulated Products

22. Pursuant to Article 39.3 of TRIPS, each Party, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products that utilize new chemical entities,[10] the submission of undisclosed test or other data, or evidence of approval in another country,[11] the origination of which involves a considerable effort, shall protect such information against unfair commercial use. In addition, each Party shall protect such information against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the information is protected against unfair commercial use.

23. With respect to pharmaceutical products that are subject to a patent:

(a) each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process.

(b) the patent owner shall be notified of the identity of any third party requesting marketing approval effective during the term of the patent.

Enforcement of Intellectual Property Rights

[10] It is understood that protection for "new chemical entities" shall also include protection for new uses for old chemical entities for a period of three years.

[11] It is understood that, in situations where there is reliance on evidence of approval in another country, Rubena shall at a minimum protect such information against unfair commercial use for the same period of time the other country is protecting such information against unfair commercial use.

24. Each Party shall provide that, at least in cases of knowing infringement of trademark, copyright and related rights, its judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement and any profits of the infringer that are attributable to the infringement that are not taken into account in computing such damages. Injury to the right holder shall be based upon the value of the infringed-upon item, according to the suggested retail price of the legitimate product, or other equivalent measures established by the right holder for valuing authorized goods.

25. Each Party shall ensure that its statutory maximum fines are sufficiently high to deter future acts of infringement with a policy of removing the monetary incentive to the infringer, and shall provide its judicial and other competent authorities the authority to order the seizure of all suspected pirated copyright and counterfeit trademark goods and related implements the predominant use of which has been in the commission of the offense, and documentary evidence.

26. Each Party shall provide, at least in cases of copyright piracy or trademark counterfeiting, that its authorities may initiate criminal actions and border measure actions ex officio, without the need for a formal complaint by a private party or right holder.

27. In civil cases involving copyright or related rights, each Party shall provide that the natural person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or phonogram in the usual manner shall, in the absence of proof to the contrary, be presumed to be the designated right holder in such work, performance or phonogram. It shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. Such presumptions shall pertain in criminal cases until the defendant comes forward with credible evidence putting in issue the ownership or subsistence of the copyright or related right.

28. Each Party shall provide that copyright piracy involving significant willful infringements that have no direct or indirect motivation of financial gain shall be considered willful copyright piracy on a commercial scale.

Transition Periods

29. Each Party shall implement fully the obligations of this Article within the following time periods:

    (a) With respect to all obligations in paragraphs 1(c), 1(d), and 10 through 16, two years from the date of entry into force of this Agreement. In addition, Rubena agrees to accede to and ratify the WCT and WPPT within two years from the date of entry into force of this Agreement.

(b) With respect to all obligations in paragraph 1(b), six months from the date of entry into force of this Agreement. In addition, Rubena agrees to ratify the UPOV Convention within one year from the date of entry into force of this Agreement.

(c) With respect to all obligations in paragraph 22, except the obligation in footnote 10, immediately from the date of entry into force of this Agreement.

(d) With respect to all obligations under this Article not referenced in subparagraphs (a), (b) and (c), three years from the date of entry into force of this Agreement.

ARTICLE 5: ENVIRONMENT

1. The Parties recognize that it is inappropriate to encourage trade by relaxing domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.

2. Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws, each Party shall strive to ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.

3.
   (a) A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.
   (b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.
4. For purposes of this Article, “environmental laws” mean any statutes or regulations of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

   (a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;

   (b) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party's territory, but does not include any statutes or regulations, or provision thereof, directly related to worker safety or health.

ARTICLE 6: LABOR

1. The Parties reaffirm their obligations as members of the International Labor Organization ("ILO") and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Parties shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in paragraph 6 are recognized and protected by domestic law.

2. The Parties recognize that it is inappropriate to encourage trade by relaxing domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.

3. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in paragraph 6 and shall strive to improve those standards in that light.

4.

(a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

5. The Parties recognize that cooperation between them provides enhanced opportunities to improve labor standards. The Joint Committee established under Article 15 shall, during its regular sessions, consider any such opportunity identified by a Party.

6. For purposes of this Article, "labor laws" means statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

   (a) the right of association;

(b) the right to organize and bargain collectively;

(c) a prohibition on the use of any form of forced or compulsory labor;

(d) a minimum age for the employment of children; and

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

ARTICLE 7: ELECTRONIC COMMERCE

1. Recognizing the economic growth and opportunity provided by electronic commerce and the importance of avoiding barriers to its use and development, each Party shall seek to refrain from:

   (a) deviating from its existing practice of not imposing customs duties on electronic transmissions;

   (b) imposing unnecessary barriers on electronic transmissions, including digitized products; and

   (c) impeding the supply through electronic means of services subject to a commitment under Article 3 of this Agreement, except as otherwise set forth in the Party's Services Schedule in Annex 3.1.

2. The Parties shall also make publicly available all relevant laws, regulations, and requirements affecting electronic commerce.

3. The Parties reaffirm the principles announced in the Andrena-Rubena Joint Statement on Electronic Commerce.

ARTICLE 8: VISA COMMITMENTS

1. Subject to its laws relating to the entry, sojourn and employment of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party solely to carry on substantial trade, including trade in services or trade in technology, principally between the Parties.

2. Subject to its laws relating to the entry, sojourn and employment of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Party that employs them, have

committed or are in the process of committing a substantial amount of capital or other resources.[12]

ARTICLE 9: SAFEGUARD MEASURES

1. If as a result of the reduction or elimination of a duty[13] under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive product, such Party may:

   (a) suspend the further reduction of any rate of duty provided for under this Agreement for the good; or

   (b) increase the rate of duty on the good to a level not to exceed the lesser of

      (i) the most-favored-nation (MFN) applied rate of duty in effect at the time the measure is taken; and

      (ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

   (c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the lesser of the MFN applied rate of duty that was in effect on the good for the immediately preceding corresponding season or the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to a measure described in paragraph 1:

   (a) a Party shall take the measure only following an investigation by the competent authorities of such Party in accordance with Articles 3 and 4.2(c) of the WTO Agreement on Safeguards; and to this end, Articles 3 and 4.2(c) of the

[12] Paragraphs 1 and 2 of this Article render nationals of Rubena eligible for treaty-trader (E-1) and treaty-investor (E-2) visas subject to the applicable provisions of ANDRENA laws and corresponding regulations governing entry, sojourn and employment of aliens. They also guarantee similar treatment for ANDRENA nationals seeking to enter Rubena's territory.

[13] A determination that an originating good is being imported as a result of the reduction or elimination of a duty provided for in this Agreement shall be made only if such reduction or elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. The passage of a period of time between the commencement or termination of such reduction or elimination and the increase in imports shall not by itself preclude the determination referenced in this footnote. If the increase in imports is demonstrably unrelated to such reduction or elimination, the determination referenced in this footnote shall not be made.

WTO Agreement on Safeguards are incorporated into and made a part of this Agreement, mutatis mutandis;

(b) in the investigation described in subparagraph (a), a Party shall comply with the requirements of Article 4.2(a) of the WTO Agreement on Safeguards; and to this end, Article 4.2(a) is incorporated into and made a part of this Agreement, mutatis mutandis;

(c) a Party shall notify the other Party upon initiation of an investigation described in subparagraph (a) and shall consult with the other Party prior to taking the measure; and, if a Party takes a provisional measure pursuant to paragraph 3, the Party shall also notify the other Party prior to taking such measure, and shall initiate consultations with the other Party immediately after such measure is taken;

(d) no measure shall be maintained: +

(i) except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

(ii) for a period exceeding four years; or

(iii) beyond the expiration of the transition period, except with the consent of the Party against whose originating good the measure is taken;

(e) no measure may be applied against the same originating good on which a measure has previously been taken;

(f) where the expected duration of the measure is over one year, the importing Party shall progressively liberalize it at regular intervals during the period of application; and

(g) on termination of the measure, the rate of duty shall be the rate that, according to the Party's schedule in Annex 2.1 to this Agreement, would have been in effect one year after initiation of the measure. Beginning on January 1 of the year following the termination of the action, the Party that has applied the measure shall:

(i) apply the rate of duty set out in its schedule in Annex 2.1 to this Agreement as if the measure had never been applied; or

(ii) eliminate the tariff in equal annual stages ending on the date corresponding to the staging category set out in its schedule in Annex 2.1 or its schedule to Annex 2.1.

3. In critical circumstances where delay would cause damage which it would be difficult to repair, a Party may take a measure described in paragraph 1(a), 1(b), or 1(c) on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports from the other Party have increased as a result of the preferential treatment under this Agreement, and such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The duration of such provisional measure shall not exceed 200 days, during which time the requirements of subparagraphs 2(a) and 2(b) shall be met. Any tariff increases shall be promptly refunded if the investigation described in subparagraph 2(a) does not result in a finding that the requirements of paragraph 1 are met. The duration of any provisional measure shall be counted as part of the period described in subparagraph 2(d).

4. The Party applying a measure described in paragraph 1 shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. If the Parties are unable to agree on compensation, the Party against whose originating good the measure is applied may take tariff action having trade effects substantially equivalent to the measure applied under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects. However, the right to take tariff action shall not be exercised for the first 24 months that the measure is in effect, provided that the measure has been applied as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Article.

5. The Parties recognize that, because it has recently begun to produce a like or directly competitive product described in paragraph 1, an infant industry may face challenges that more mature industries do not encounter. Each Party shall ensure that the procedures described in paragraph 2 do not create obstacles to infant industries that seek the imposition of such measures.

6. At its regularly scheduled session for the year commencing 14 years after the date of entry into force of this Agreement, the Joint Committee shall conduct a review of the operation of this Article. Based on the results of this review and on the agreement of the Joint Committee, the transition period may be extended.

7. For purposes of this Article:

   domestic industry means the producers as a whole of the like or directly competitive product operating in the territory of a Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;

   serious injury means a significant overall impairment of a domestic industry;

substantial cause means a cause which is important and not less than any other cause;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

transition period means the 15-year period beginning on January 1 of the year following entry into force of this Agreement, except if such period is extended in accordance with paragraph 6 of this Article.

8. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken pursuant to Article XIX and the Agreement on Safeguards, except that a Party taking a safeguard measure under Article XIX and the Agreement on Safeguards may exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat thereof.

ARTICLE 10: BALANCE OF PAYMENTS

Should either Party decide to impose measures for balance of payments purposes, it shall do so in accordance with the Party's obligations under the WTO Agreement. In adopting such measures, the Party shall strive not to impair the relative benefits accorded to the other Party under this Agreement.

ARTICLE 11: EXCEPTIONS

1. For purposes of Article 2 of this Agreement, Article XX of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement. The Parties understand that the measures referred to in GATT 1994 Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT 1994 Article XX(g) applies to measures relating to conservation of living and non-living exhaustible natural resources.

2. Nothing in this Agreement shall be construed:

   (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

   (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests:

      (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology

undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

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

3. Except as set out in this paragraph, nothing in this Agreement shall apply to taxation measures.

(a) Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

(b) Notwithstanding subparagraph (a), Article 2.3 and such other provisions of this Agreement as are necessary to give effect to Article 2.3 shall apply to taxation measures to the same extent as does Article III of the GATT 1994.

(c) Notwithstanding subparagraph (a), the national treatment commitment under Article 3.2 shall apply to taxation measures to the same extent as under the GATS, and the national treatment commitment under Article 3.2(b) shall apply to taxation measures to the same extent as if the Party had made an identical national treatment commitment under Article XVII of the GATS.

ARTICLE 12: ESSENTIAL ELEMENT OF THE AGREEMENT

Full compliance with the International Covenant of Civil and Political Rights, 1966 shall be the essential element of this Agreement. Gross violation of any of these rights shall be deemed to terminate this Agreement automatically..

ARTICLE 13: ECONOMIC COOPERATION AND TECHNICAL ASSISTANCE

To realize the objectives of this Agreement and to contribute to the implementation of its provisions:

(a) the Parties declare their readiness to foster economic cooperation; and

(b) in view of Rubena’s developing status, and the size of its economy and resources, the Andrena shall strive to furnish Rubena with economic technical assistance, as appropriate.

ARTICLE 14: RULES OF ORIGIN AND COOPERATION IN CUSTOMS ADMINISTRATION

1. The Parties recognize that the rules regarding eligibility for the preferential tariff treatment afforded by this Agreement, as set out in Article 2 and Annex 2.2, are crucial to the functioning of this Agreement, and each Party shall strive to administer such rules effectively, uniformly, and consistently with the object and purpose of this Agreement and the WTO Agreement.

2. The Parties shall consult as appropriate, through the Joint Committee or through the consultative mechanism established in Article 16:

   (a) to agree upon the means to cooperate and provide administrative assistance to achieve the commitments in paragraph 1; and

   (b) to address situations pertaining to claims of preferential treatment under this Agreement for imported goods that do not satisfy the requirements in Annex 2.2.

3. The Parties, within 180 days after the entry into force of this Agreement, shall enter into discussions with a view to developing interpretative and explanatory materials on the implementation of Annex 2.2.

ARTICLE 15: CONSULTATIONS

1. The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Either Party may request consultations with the other Party with respect to any matter affecting the operation or interpretation of this Agreement. If a Party requests consultations with regard to a matter, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request for consultations and enter into consultations in good faith.

ARTICLE 16: DISPUTE SETTLEMENT

All disputes in respect of interpretation or application of this Agreement shall be settled through consultations, failing which through any methods of settlement enumerated under Article 33 of the United Nations Charter, and may also include resort to the WTO dispute settlement mechanism.

ARTICLE 17: MISCELLANEOUS PROVISIONS

1. Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

2. For purposes of Articles 5 and 6, “statutes and regulations” means,

   (a) with respect to Rubena, an act of the Rubenan Parliament, or by-law or regulation promulgated pursuant to an act of the Rubenain Parliament that is enforceable by action of the Government of Rubena; and

   (b) with respect to the Andrena, an act of the Andrena Congress or regulation promulgated pursuant to an act of the Andrena Congress that is enforceable, in the first instance, by action of the federal government.

3. The Annexes and Schedules to this Agreement are an integral part thereof.

4. All references in this Agreement to GATT 1994 are to the GATT 1994 in effect on the date of entry into force of this Agreement.

ARTICLE 18: ENTRY INTO FORCE OF THE AGREEMENT

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force two months after the date on which the Parties exchange written notification that such procedures have been completed or after such other period as the Parties may agree.

ARTICLE 19: TERMINATION OF THE AGREEMENT

1. Without prejudice to Article 12 hereof, either Party may terminate this Agreement by written notification to the other Party. This Agreement shall expire six months after the date of such notification.

2. Notwithstanding its termination as above, the obligations to make good of any breach or non-fulfillment of the Agreement during its currency, shall be enforceable even after such termination.

ARTICLE 20: REGISTRATION UNDER ARTICLE 102 OF THE CHARTER OF THE UNITED NATIONS

Both Parties shall take steps to cause registration of this Agreement pursuant to Article 102 of the Charter of the United Nations, by notifying the Agreement to the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Geneva in duplicate, in the English language, this twenty-fourth day of

April, 1998. The language text shall be prepared in all other languages acceptable to the parties, which shall be considered equally authentic upon an exchange of diplomatic notes confirming its conformity with the English language text. In the event of a discrepancy, the English language text shall prevail.