

Chapter 11

Intellectual Property

Article 1 Objectives

The objectives of this chapter are to:

- (a) facilitate the production and commercialization of innovative and creative products between the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

Intellectual Property

Sub-Section 1

Principles

Article 2 Nature and Scope of Obligations

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties including the WTO Agreement on Trade-related Aspects of Intellectual Property (hereinafter called TRIPS Agreement). The provisions of this chapter shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property.

2. For the purpose of this Agreement, intellectual property rights embody copyright, including copyright in computer programs and in databases, sui generis rights for non original databases, and rights related to copyright, rights related to patents, trademarks, trade names in so far as these are protected as exclusive property rights in the domestic law concerned, designs, layout- designs (topographies) of integrated circuits, geographical indications, including designations of origin, indications of source, plant varieties, protection of undisclosed information and the protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).

Article 2bis Most Favoured Nation

In accordance with Articles 3 and 4 of the TRIPS Agreement and subject to the limitations foreseen in those provisions, each Party will accord to the nationals of all other Parties:

(a) a treatment no less favourable than that it accords to its own nationals with regard to the protection of all categories of intellectual property, and

(b) any advantage, favour, privilege or immunity it grants to the nationals of any other country with regard to the protection of all categories of intellectual property.

Article 3

Transfer of Technology

1. The Parties agree to exchange views and information on their domestic and international practices and policies affecting transfer of technology. This shall in particular include measures to facilitate information flows, business partnerships, licensing and subcontracting deals on a voluntary basis. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including issues such as the relevant legal framework and development of human capital.

2. The Parties shall ensure that the legitimate interests of the intellectual property right holders are protected.

Article 4

Exhaustion

The Parties shall be free to establish their own regime for exhaustion of intellectual property rights, subject to the provisions of the TRIPS Agreement.

Sub-Section 2

Standards Concerning Intellectual Property Rights

Article 5

Copyright and Related Rights

Article 5.1 – Protection Granted

The Parties shall comply with:

a) Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961);

- b) Article 1 through 18 of the Berne Convention for the Protection of Literary and Artistic works (1886, last amended in 1979);
- c) Articles 1 through 14 of the WIPO Copyright Treaty – WCT (Geneva, 1996);
- d) Articles 1 through 23 of the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996).

Article 5.2 - Duration of Authors' Rights

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
4. Where a work is published in volumes, parts, installments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each separately.
5. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within 70 years from their creation, the protection shall terminate.
6. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music specifically created for use in the cinematographic or audiovisual work.

Article 5.3 - Duration of Related Rights

1. The rights of performers shall expire not less than 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.
2. The rights of producers of phonograms shall expire not less than 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the

phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public.

3. The rights of producers of the first fixation of a film shall expire not less than 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

4. The rights of broadcasting organizations shall expire not less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 5.4 – Co-operation on Collective Management of Rights

The Parties shall facilitate the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access and delivery of content between the territories of the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works or other protected subject matters. The Parties recognize that it is necessary that their respective collecting societies achieve a high level of rationalisation and transparency with regard to the execution of their tasks.

Article 5.5 – Broadcasting and Communication to the Public

1. For the purpose of this provision:

a) broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also broadcasting; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

b) communication to the public means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purpose of paragraph 3, communication to the public includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

2. The Parties shall provide for performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

3. The Parties shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

4. The Parties shall provide for broadcasting organizations the exclusive right to authorize or prohibit the re-transmission of their broadcasts by any means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

5. The Parties may provide for limitations to the rights set out in paragraphs 2, 3 and 4 of this Article only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holder.

Article 5.6 - Protection of Technological Measures

1. Each party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

2. Each party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

(a) are promoted, advertised or marketed for the purpose of circumvention of, or

(b) have only a limited commercially significant purpose or use other than to circumvent,

or

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of,

any effective technological measures.

3. For the purposes of this Agreement, the expression 'technological measures' means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or any right related to copyright as provided for by law. Technological measures shall be deemed 'effective' where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.

4. Where Parties provide for limitations to the rights set out in paragraphs 2, 3 and 4 of Article 5.5 they may also make provision to ensure that right holders make available to a beneficiary of an exception or limitation the means of benefiting from that exception or limitation – to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject matter concerned.

Article 5.7 - Protection of Rights Management Information

1. Each party shall provide for adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Agreement from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by law.

2. For the purposes of this Agreement, the expression 'rights-management information' means any information provided by right holders which identifies the work or other subject-matter referred to in this Agreement, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

The first subparagraph shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Agreement.

Article 6 Trademarks

Article 6.1 – International Agreements

The European Community and THE COUNTRY shall adhere to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989) and shall comply with the Trademark Law Treaty (1994) and make all reasonable efforts to accede to the Singapore Treaty on the Law of Trademarks (2006).

Article 6.2 – Registration Procedure

The European Community and THE COUNTRY shall provide for a system for the registration of trademarks in which each final decision taken by the relevant trademark administration is duly reasoned and in writing. As such, reasons for the refusal to register a trademark shall be communicated in writing to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal before Court. The European Community and THE COUNTRY shall introduce the possibility to oppose trademark applications. Such opposition proceedings shall be adversarial. The Parties shall provide a publicly available electronic database of trademark applications and trademark registrations.

Article 6.3 – Well-known trademarks

The Parties shall co-operate with the purpose of making protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention (1967) and Article 16(2) and (3) of the TRIPS Agreement, effective.

Article 6.4 – Exceptions to the Rights Conferred by a Trademark

The Parties shall provide for the fair use of descriptive terms, including geographical indications, as a limited exception to the rights conferred by a trademark. They may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 7

Geographical Indications

Article 7.1 - Recognition of geographical indications for agricultural products and foodstuffs, wine, and spirits other than aromatised wines

1. Having examined the [insert reference to the relevant legislation of the other Party], the Community concludes that these laws, regulations and requirements meet the elements laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications – annexed to this Article].
2. Having examined Council Regulation (EC) No 510/2006, with its implementing rules, for the registration, control, and protection of geographical indications of agricultural products and foodstuffs in the Community, Chapters III of Title III of Council Regulation (EC) No 479/2008 on the common organisation of the market in wine and Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks, the COUNTRY concludes that these laws, rules and procedures meet the elements laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications – annexed to this Article].
3. Having completed an objection procedure and having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of the Community listed in [agricultural products and foodstuff Annex – EC], which have been registered by the European Community under the legislation referred to in paragraph (2), the COUNTRY undertakes to enter into a [Common] Register of protected geographical indications within a period not exceeding [6] months from the entry into force of this Title, the geographical indications of the Community listed in [agricultural products and foodstuff Annex – EC] and to protect the same according to the level of protection laid down in this Article.
4. Having completed an objection procedure and having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of the COUNTRY listed in [agricultural products and foodstuff Annex- the COUNTRY], which have been registered by the COUNTRY under the legislation referred to in paragraph (1), the European Community undertakes to enter into the EC Register of protected geographical indications and designations of origin, within a period not exceeding

[6] months from the entry into force of this Title, the geographical indications of the COUNTRY listed in [agricultural products and foodstuff Annex – the COUNTRY] and to protect the same according to the level of protection laid down in this Article].

Article 7.2 - Protection of geographical indications for wines, aromatised wines and spirits

1. The geographical indications listed in [wine, spirit and aromatised wines Annex – EC and the COUNTRY] shall be protected in the territories of the Contracting Parties, which use these geographical indications, in accordance with the relevant legislation on geographical indications of the Contracting Party concerned.
2. In the case of aromatised wines the Contracting Parties agree to add new geographical indications to be protected in [wine, spirit and aromatised wines Annex – EC and the COUNTRY] in accordance with the procedure set out in Article 7.10.

Article 7.3 Scope of protection of geographical indications

1. The geographical indications listed in [agricultural products and foodstuff Annex – EC] [agricultural products and foodstuff Annex – the COUNTRY] [wine, spirit and aromatised wines Annex – EC and the COUNTRY], as well as those registered pursuant to Article 7.7, shall be protected against:
 - (a) any direct or indirect commercial use of a protected name:
 - for comparable products not compliant with the product specification of the protected name, or
 - in so far as such use exploits the reputation of a geographical indication;
 - (b) any misuse, imitation or evocation¹, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar;
 - (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
 - (d) any other practice liable to mislead the consumer as to the true origin of the product.

¹ Is considered an evocation, notably, the use in any way for products falling under heading No 20.09 of the Harmonised System of the International Convention on the Harmonised Commodity Description and Coding System, done at Brussels on 14 June 1983, although only insofar as they are referred to wines falling under heading N°22.04, aromatised wines falling under heading N° 22.05 and spirits falling under heading 22.08 of the Harmonised System of the International Convention on the Harmonised Commodity Description and Coding System, done at Brussels on 14 June 1983

2. A protected name cannot be deemed to have become generic

3. (a) If geographical indications are wholly or partially homonymous,¹ protection shall be granted to each indication provided that it has been used in good faith and with due regard for local and traditional usage and the actual risk of confusion. Without prejudice to Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Contracting Parties shall mutually decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

(b) A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.

4. Nothing in this Article shall oblige a Contracting Party to protect a geographical indication of the other Contracting Party which is not or ceases to be protected in its country of origin. The Contracting Parties shall notify each other if a geographical indication ceases to be protected in its country of origin.

Article 7.4. Right of use of geographical indications

1. A name protected under this Article may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirit drinks conforming to the corresponding specification.

2. Once a geographical indication is protected under this Article, the use of such protected name shall not be subject to any registration of users, or further charges.

Article 7.5 Enforcement of protection

The Contracting Parties shall enforce the protection provided for in this Article by appropriate administrative action by public authorities. They shall also enforce such protection at the request of an interested party.

Article 7.6 Relationship with trademarks

1. The Contracting Parties shall refuse to register or shall invalidate a trademark that corresponds to any of the situations referred to in Article 7.3(1) in relation to a protected geographical indication for like products, provided an application to register the trademark is submitted after the date of application for protection of the geographical indication in the territory concerned.

2. For geographical indications referred to in Articles 7.1 and 7.2, the date of application for protection shall be the date of entry into force of this Article.

3. For geographical indications referred to in Article 7.7, the date of application for protection shall be the date of the transmission of a request to the other Party to protect a geographical indication.

4. The Contracting Parties shall have no obligation to register a geographical indication where, in the light of a reputed or well-known trademark, protection is liable to mislead consumers as to the true identity of the product.

5. Without prejudice to paragraph 4, the Contracting Parties shall protect geographical indications also where a prior trademark exists. A prior trademark shall mean a trademark the use of which corresponds to one of the situations referred to in Article 7.3(1), which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of one Contracting Party before the date on which the request for protection of the geographical indication is submitted by the other Contracting Party under this Article.

6. Such trademark may continue to be used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties.

Article 7.7 - Addition of protected geographical indications

1. New geographical indications shall be protected under this Article once the examination and objection procedure, referred to in Articles 7.1(3) and 7.1(4), is completed to the satisfaction of both Contracting Parties.

2. The request for protection of additional geographical indications under this Article shall be notified to the European Commission – DG Agriculture and Rural Development and to the ([Third Country concerned] governmental entity).

3. A name may not be registered as a geographical indication where it conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true identity of the product

Article 7.8 – General rules

1. This Article shall apply without prejudice to the rights and obligations of the Contracting Parties under the WTO Agreement.

2. Importation, export and marketing of agricultural products and foodstuffs, wines, and spirits other than aromatised wines referred to in Articles 7.1, 7.2 and 7.7 shall be conducted in compliance with the laws and regulations applying in the territory of the importing Contracting Party.

Article 7.9 Co-operation

The Contracting Parties shall, either directly or through the Joint Committee established pursuant to Article 7.10, maintain contact on all matters relating to the implementation and the functioning of this Article. In particular, a Contracting Party may request to the other Contracting Party information as regards the compliance to products specification and their further modifications.

Article 7.10 - Organisational/Institutional Provisions [to be finalised at a later stage in light of horizontal provisions in the FTA] [Joint Committee]

1. Both Contracting Parties agree to set up a [Joint Committee] consisting of representatives of the Community and the COUNTRY with the purpose of monitoring the development of this Article and of intensifying their co-operation and dialogue on geographical indications.

2. The [Joint Committee] adopts its decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of either of the Parties, alternatively in the European Community and in the COUNTRY, at a time and a place and in a manner (which may include by videoconference) mutually determined by the Contracting Parties, but no later than [90] days after the request.

3. The [Joint Committee] shall also see to the proper functioning of this Article and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:

- (a) amending Article 7.1 paragraph 1 and 2 of this Article, as regards the references to the law applicable in the Contracting Parties,
- (b) modifying [wine, spirit and aromatised wines Annex – EC and the COUNTRY] as regards to geographical indications of aromatised wines
- (c) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications,
- (d) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Article.

Protocol (mentioned in article 7.1 paragraphs (1) and (2))

Elements for the registration, control, and protection of geographical indications

1. a register listing geographical indications protected in the territory;
2. an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
3. a requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;
4. control provisions applying to production;
5. an objection procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

Article 8

Designs

Article 8.1 - International Agreements

The European Community and the COUNTRY shall accede to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs (1999).

Article 8.2 - Definition

For the purpose of this agreement "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

Article 8.3 - Requirements for Protection

1. The European Community and the COUNTRY shall provide for the protection of independently created designs that are new and have individual character.
2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:
 - (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and
 - (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.
3. "Normal use" within the meaning of paragraph 2(a) shall mean use by the end user, excluding maintenance, servicing or repair work.
4. A design shall be considered to be new if no identical design has been made available to the public:
 - (a) in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;
 - (b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

Designs shall be deemed to be identical if their features differ only in immaterial details.

5. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:
 - (a) in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;
 - (b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

6. For the purpose of applying paragraphs 4 and 5, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the territory in which protection is claimed, before the date of filing of the application for registration or, if priority is claimed, the date of priority.

In the case of unregistered design protection, a design shall be deemed to have been made available to the public if it has been published, exhibited, used in trade or otherwise disclosed in such way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the territory in which protection is claimed. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

A disclosure shall not be taken into consideration for the purpose of applying paragraphs 4 and 5 if a design for which protection is claimed under a registered design right has been made available to the public:

- (a) by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer, or his successor in title; and
- (b) during the 12-month period preceding the date of filing of the application or, if priority is claimed, the date of priority.

The preceding paragraph shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.

7. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Article. Unregistered designs made available to the public shall confer the same exclusive rights, but only if the contested use results from copying the protected design.

Article 8.4 - Exceptions

1. The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
2. Without prejudice to existing domestic legislation on unregistered design rights, a design right shall not subsist in features of appearance of a product which are solely dictated by its technical function.

A design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

Notwithstanding the preceding paragraph, a design right shall, under the conditions set out in paragraphs 4 and 5 of Article 8.3, subsist in a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

3. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

Article 8.5 - Rights Conferred

The owner of a protected design shall at least have the right to prevent third parties not having the owner's consent in particular from making, offering, putting on the market, importing, exporting or using a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

Article 8.6 - Term of Protection

1. The duration of protection available in the European Community and the COUNTRY following registration shall amount to at least 5 years. The right holder may have the term of protection renewed for one or more periods of five years each, up to a total term of 25 years from the date of filing.
2. The duration of protection available in the European Community and the COUNTRY for unregistered designs shall amount to at least three years as from the date on which the design was made available to the public in one of the signatories.

Article 8.7 - Invalidity or Refusal of Registration

1. The Parties may only provide that a design is refused for registration or declared invalid after registration on substantive grounds in the following cases:

- (a) if the design does not correspond to the definition under Article 8.2;
- (b) if it does not fulfil the requirements of Article 8.3 and Article 8.4;
- (c) if, by virtue of a court decision, the right holder is not entitled to the design;
- (d) if the design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if a priority is claimed, the date of priority of the design, and which is protected from a date prior to the said date by a registered design or an application for a design;
- (e) if a distinctive sign is used in a subsequent design, and the law of the Party concerned governing that sign confers on the right holder of the sign the right to prohibit such use;
- (f) if the design constitutes an unauthorised use of a work protected under the copyright law of the signatory concerned;
- (g) if the design constitutes an improper use of any of items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property or of badges, emblems and

escutcheons other than those covered by the said Article 6ter and which are of particular public interest in a Party.

The preceding paragraph is without prejudice to the right of the Parties to set formal requirements for design applications.

2. A Party may provide, as an alternative to the invalidity, that a design subject to the ground provided for in paragraph 1 may be limited in its use.

Article 8.8 - Relationship to Copyright

A design protected by a design right registered in a signatory party in accordance with this Article shall also be eligible for protection under the law of copyright of that signatory as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each signatory party.

Article 9 Patents

Article 9.1 - International Agreements

The Parties shall:

- a) Accede to the Patent Cooperation Treaty (PCT)
- b) Comply with articles 2 through 9 of the Budapest Treaty on the International recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure (1977, amended in 180).

The Parties shall make all reasonable efforts to comply with Articles 1 through 16 of the Patent Law Treaty (Geneva, 2000).

Article 9.2 – Patents and Public Health

1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.
2. The Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.
3. The Parties shall establish a procedure for the grant of compulsory licences in relation to patents and supplementary protection certificates concerning the manufacture and sale of pharmaceutical products, when such products are intended for export to eligible importing countries in need of such products in order to address public health problems.

Article 9.3 - Supplementary Protection Certificates

1. The Parties recognise that medicinal and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.
2. **The Parties shall provide for a further period of protection for a medicinal or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in paragraph 1 second sentence above, reduced by a period of five years.**
3. Notwithstanding paragraph 2 and the possible extension for paediatric use for pharmaceutical products, the duration of the further period of protection may not exceed five years.

Article 10

Protection of Data Submitted to Obtain an Authorisation to put a Pharmaceutical Product on the Market

1. The Parties shall implement a comprehensive system to guarantee the confidentiality, non-disclosure **and non-reliance of data submitted for the purpose of obtaining an authorisation to put a pharmaceutical product on the market.**
2. Both Parties shall enact and implement legislation ensuring that any information submitted to obtain an authorisation to put a pharmaceutical product on the market will **remain undisclosed to third parties and benefit from a period of at least ten years of protection against unfair commercial use starting from the date of grant of marketing approval in either of the Parties.**
 - (a) **during a period of at least eight years, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, will without the explicit consent of the person or entity who submitted this data, rely directly or indirectly on such data in support of an application for the authorisation to put a pharmaceutical product on the market;**
 - (b) **during a ten-year period, any subsequent application for the authorisation to put a pharmaceutical product on the market would not be granted, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant. Products registered without submission of such data would be removed from the market until the requirements were met.**
3. **In addition, the ten-year period referred shall be extended to a maximum of eleven years if, during the first eight years after obtaining the authorisation in either of the Parties, the holder of the basic authorisation obtains an authorisation for one or**

more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.

[Similar provision on data protection for chemical products will be inserted]

Article 11 Plant Varieties

The Parties shall co-operate to promote and reinforce the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (UPOV) as revised on March 19, 1991, including the optional exception to the breeder's right as referred to in Article 15(2) of the said Convention.

Article 12 Genetic Resources, Traditional Knowledge and Folklore

1. Subject to their domestic legislation the Parties respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.
2. The Parties recognise the importance of taking appropriate measures, subject to national legislation, to preserve traditional knowledge and agree to continue working towards the development of internationally agreed sui generis models for the legal protection of traditional knowledge.
3. The Parties agree that the intellectual property provisions of this sub-section and the Convention on Biological Diversity shall be implemented in a mutually supportive way.
4. The Parties agree to regularly exchange views and information on relevant multilateral discussions:
 - a) in WIPO, on the issues dealt with in the framework of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore;
 - b) in CBD, on the issues related to Article 8(j) and to the negotiation on an international regime on access to genetic resources and fair and equitable sharing of the benefits arising from their utilisation;
 - c) in FAO, on the issues dealt with by the Commission on Genetic Resources for Food and Agriculture and by the International Treaty on Plant Genetic Resources for Food and Agriculture; and
 - d) in the WTO, on the issues related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore.

5. Following the conclusion of the relevant multilateral discussions referred to in paragraph 4, the Parties agree to, at the request of one of the signatories, review this Article in the light of the results and conclusion of such multilateral discussions.

Sub-Section 3

Enforcement of Intellectual Property Rights

Article 13

General Obligations

1. Both Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights². Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
2. Those measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 14

Entitled Applicants

1. The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this section and in Part III of the TRIPS Agreement:
 - a) the holders of intellectual property rights in accordance with the provisions of the applicable law,
 - b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,
 - c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law,

² For the purposes of Articles 13 to 25 the notion of "intellectual property rights" should at least cover the following rights: copyright; rights related to copyright; *sui generis* right of a database maker; rights of the creator of the topographies of a semi conductor product; trademark rights; design rights; patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected as exclusive rights in the national law concerned.

d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

Article 15

Evidence

The Parties shall take such measures as are necessary, in the case of an infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate and following an application, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 16

Measures for Preserving Evidence

The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by an entity who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

Article 17

Right of Information

1. The Parties shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:
 - a) was found in possession of the infringing goods on a commercial scale;

- b) was found to be using the infringing services on a commercial scale;
- c) was found to be providing on a commercial scale services used in infringing activities; or
- d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 shall, as appropriate, comprise:

- a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
- b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:

- a) grant the right holder rights to receive fuller information;
- b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- c) govern responsibility for misuse of the right of information;
- d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his own participation or that of his close relatives in an infringement of an intellectual property right ; or

- e) govern the protection of confidentiality of information sources or the processing of personal data.

Article 18

Provisional and Precautionary Measures

1. The Parties shall ensure that the judicial authorities may, at the request of the applicant issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

Article 19

Corrective Measures

1. The Parties shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the recall, definitive removal from the channels of commerce or destruction of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order destruction of materials and implements principally used in the creation or manufacture of those goods.
2. The judicial authorities shall order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article 20

Injunctions

The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. The Parties shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

Article 21

Alternative Measures

The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 19 'corrective measures' and/or Article 20 'injunctions', **the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 19 'corrective measures' and/or Article 20 'injunctions' if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.**

Article 22

Damages

1. The Parties shall ensure that when the judicial authorities set the damages:
 - a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement ; or
 - b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.
2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

Article 23

Legal Costs

The Parties shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow this.

Article 24 Publication of Judicial Decisions

The Parties shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. The Parties may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

Article 25 Presumption of authorship or ownership

For the purposes of applying the measures, procedures and remedies provided for under this Agreement in relation to the enforcement of copyright and related rights,

(a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;

(b) the provisions under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

Article 26 Administrative Procedures

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

Article 27 Criminal Sanctions

[To be specified]

Article 28 Liability of Intermediary Service Providers

Article 28.1 – Use of Intermediaries' Services

1. Both Parties recognise that the services of intermediaries may be used by third parties for infringing activities. To ensure the free movement of information services and at the same time enforce intellectual property rights in the digital environment, each Party shall provide for the following measures for intermediary service providers where they are in no way involved with the information transmitted.

Article 28.2 - Liability of Intermediary Service Providers: "Mere Conduit"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- a) does not initiate the transmission;
- b) does not select the receiver of the transmission; and
- c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

Article 28.3 - Liability of Intermediary Service Providers: "Caching"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- a) the provider does not modify the information;
- b) the provider complies with conditions on access to the information;
- c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and

e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

Article 28.4 - Liability of Intermediary Service Providers: Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for the Parties of establishing procedures governing the removal or disabling of access to information.

Article 28.5 - No General Obligation to Monitor

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 28.2, 28.3 and 28.4, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

2. The Parties may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

Article 29

Border Measures

1. The Parties shall, unless otherwise provided for in this section, adopt procedures³ to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, entry or exit of the customs territory, placement under a suspensive procedure or placement under a free zone or a free warehouse of goods infringing an intellectual property right⁴ may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation or the retain of such goods.

2. The Parties shall provide that when the customs authorities, in the course of their actions and before an application has been lodged by a right holder or granted, have sufficient grounds for suspecting that goods infringe an intellectual property right, they may suspend the release of the goods or detain them in order to enable the right holder to submit an application for action in accordance with the previous paragraph.

3. Any rights or duties established in Section 4 of the TRIPS Agreement concerning the importer shall be also applicable to the exporter or to the holder of the goods.

Article 30

Codes of Conduct and Forensic Co-operation

1. Parties shall encourage:

a) the development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture;

³ It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder.

⁴ For the purposes of this provision, "goods infringing an intellectual property right" means:

(a) "counterfeit goods", namely:

(i) goods, including packaging, bearing without authorisation a trademark identical to the trademark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the trademark holder's rights;

(ii) any trademark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as the goods referred to in point (i);

(iii) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in point (i);

(b) "pirated goods", namely goods which are or contain copies made without the consent of the holder, or of a person duly authorised by the holder in the country of production, of a copyright or related right or design right, regardless of whether it is registered in national law;

(c) goods which, according to the law of the Party in which the application for customs action is made, infringe:

(i) a patent;

(ii) a plant variety right;

(iii) a design;

(iv) a geographical indication

b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.

2. Parties shall co-operate in order to identify forensically illegal optical discs which are produced by plants located in the COUNTRY. The competent authority of the COUNTRY shall collect and store samples for each production line in a database to which trade or professional associations or organizations shall have access, under the conditions defined by the COUNTRY'S law, to compare samples found on the market. In exchange, these associations or organizations may use, at the request of the competent authority of the COUNTRY, their international sample database to help that competent authority determine the source of the illegal product that it has reason to believe was produced outside the COUNTRY.

Sub-Section 4

Article 31

Co-operation

1. The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this chapter.

2. Subject to the provisions of Article [X, horizontal art. on assistance/co-operation issues] of this Agreement, areas of co-operation include, but are not limited to, the following activities:

a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement; exchange of experiences in the European Community and the COUNTRY on legislative progress;

b) exchange of experiences in the European Community and the COUNTRY on enforcement of intellectual property rights, including on central and sub-central enforcement by customs, police, administrative and judiciary bodies; co-ordination to prevent exports of counterfeit goods, including with other countries;

b) capacity-building; exchange and training of personnel;

c) promotion and dissemination of information on intellectual property rights in, inter alia, business circles and civil society; public awareness of consumers and right holders;

d) enhancement of institutional co-operation, for example between intellectual property offices;

e) actively promoting awareness and education of the general public for intellectual property rights policies: formulate effective strategies to identify key audiences and create communication programmes to increase consumer and media awareness on the impact of intellectual property violations, including the risk to health and safety and the connection to organised crime.

3. Without prejudice and as a complement to paragraphs 1 and 2, the Parties agree to establish and maintain an effective dialogue on intellectual property issues ("IP Dialogue") to address topics relevant to the protection and enforcement of intellectual property rights covered by this chapter, and also any other relevant issue.

Article 32
Regional integration

[EU 1. The Community of the Andean Countries undertakes to adopt further steps towards deeper regional integration in the field of intellectual property rights. This process shall cover further harmonisation of intellectual property laws and regulations, further progress towards regional management and enforcement of national intellectual property rights, as well as the creation and management of regional intellectual property rights, as appropriate.]

2. The Parties undertake to move towards a harmonised level of intellectual property protection between their respective regions.