

## TITLE VII

### INTELLECTUAL PROPERTY

#### CHAPTER 1

#### GENERAL PROVISIONS

#### ARTICLE 195

##### Objectives

The objectives of this Title are to:

- (a) promote innovation and creativity and facilitate the production and commercialisation of innovative and creative products between the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights that contributes to transfer and dissemination of technology and favour social and economic welfare and the balance between the rights of the holders and the public interest.

## ARTICLE 196

### Nature and Scope of the Obligations

1. The Parties reaffirm the rights and obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (hereinafter referred to as "TRIPS Agreement"), and any other multilateral agreement related to intellectual property and agreements administered under the auspices of the World Intellectual Property Organization (hereinafter referred to as "WIPO"), to which the Parties are party.
2. The provisions of this Title shall complement and specify the rights and obligations of the Parties under the TRIPS Agreement and other multilateral agreements related to intellectual property to which the Parties are party, and therefore, no provision of this Title will contradict or be detrimental to the provisions of such multilateral agreements.
3. The Parties recognise the need to maintain a balance between the rights of intellectual property holders and the interest of the public, particularly regarding education, culture, research, public health, food security, environment, access to information and technology transfer.
4. The Parties recognise and reaffirm the rights and obligations under the Convention on Biological Diversity (hereinafter referred to as "CBD") adopted on June 5, 1992, and support and encourage efforts to establish a mutually supportive relationship between the TRIPS Agreement and such Convention.

5. For the purposes of this Agreement, intellectual property rights embody:
- (a) copyright, including copyright in computer programmes and in databases;
  - (b) rights related to copyright;
  - (c) patent rights;
  - (d) trademarks;
  - (e) trade names in so far as these are protected as exclusive property rights in the domestic law concerned;
  - (f) designs;
  - (g) layout- designs (topographies) of integrated circuits;
  - (h) geographical indications;
  - (i) plant varieties; and
  - (j) protection of undisclosed information.

6. For the purposes of this Agreement, protection of intellectual property includes protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property (as revised by the Stockholm Act 1967) ( hereinafter referred to as "Paris Convention").

## ARTICLE 197

### General Principles

1. Having regard to the provisions of this Title, each Party may, in formulating or amending its laws and regulations, make use of the exceptions and flexibilities permitted by the multilateral intellectual property agreements, particularly when adopting measures necessary to protect public health and nutrition, and to guarantee access to medicines.
2. The Parties recognise the importance of the Declaration of the Fourth Ministerial Conference in Doha and especially the Doha Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the WTO Ministerial Conference and its subsequent developments. In this sense, in interpreting and implementing the rights and obligations under this Title, the Parties shall ensure consistency with this Declaration.

3. The Parties shall contribute to the implementation and respect of 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.
4. The Parties also recognise the importance of promoting the implementation of Resolution WHA 61.21 Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the World Health Assembly on 24 of May 2008.
5. In accordance with the TRIPS Agreement, no provision of this Title will prevent a Party from adopting any measure necessary to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.
6. The Parties recognise that technology transfer contributes to the strengthening of national capabilities, with the aim to establish a sound and viable technological base.
7. The Parties recognise the impact of information and communication technologies on the usage of literary and artistic works, artistic performances, phonogram productions and broadcasts and, therefore, the need to provide adequate protection of copyright and related rights in the digital environment.

## ARTICLE 198

### National Treatment

Each Party shall accord to the nationals of another Party treatment no less favourable than that it accords to its own nationals with regard to the protection<sup>1</sup> of intellectual property, subject to the exceptions already provided for in Articles 3 and 5 of the TRIPS Agreement.

## ARTICLE 199

### Most Favoured Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Party to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of the other Parties, subject to the exceptions provided for in Articles 4 and 5 of the TRIPS Agreement.

---

<sup>1</sup> For the purposes of Articles 198 and 199 "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Title.

## ARTICLE 200

### Exhaustion

Each Party shall be free to establish its own regime for exhaustion of intellectual property rights, subject to the provisions of the TRIPS Agreement.

## CHAPTER 2

### PROTECTION OF BIODIVERSITY AND TRADITIONAL KNOWLEDGE

## ARTICLE 201

1. The Parties recognise the importance and value of biological diversity and its components and of the associated traditional knowledge, innovations and practices of indigenous and local communities<sup>2</sup>. The Parties furthermore reaffirm their sovereign rights over their natural resources and recognise their rights and obligations as established by the CBD with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilization of these genetic resources.

---

<sup>2</sup> Where applicable, "indigenous and local communities" encompasses Afro American descendants.

2. The Parties recognise the past, present and future contribution of indigenous and local communities to the conservation and sustainable use of biological diversity and all of its components and, in general, the contribution of the traditional knowledge<sup>3</sup> of their indigenous and local communities to the culture and to the economic and social development of nations.
3. Subject to their domestic legislation, the Parties shall, in accordance with Article 8(j) of the CBD 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 conditioned to the prior informed consent 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.
4. In accordance with Article 15 paragraph 7 of the CBD, the Parties reaffirm their obligation to take measures with the aim of sharing in a fair and equitable way the benefits arising from the utilization of genetic resources. The Parties also recognise that mutually agreed terms may include benefit-sharing obligations in relation to intellectual property rights arising from the use of genetic resources and associated traditional knowledge.
5. Colombia and the EU Party will collaborate in further clarifying the issue and concept of misappropriation of genetic resources and associated traditional knowledge, innovation and practices so as to find, as appropriate and in accordance with the provisions of international and domestic law, measures to address this issue.

---

<sup>3</sup> Without prejudice to the implementation of this Chapter, the Parties acknowledge that the concept of traditional knowledge is discussed in relevant international fora.



6. The Parties shall cooperate, subject to domestic legislation and international law, to ensure that intellectual property rights are supportive of, and do not run counter to, their rights and obligations under the CBD, in so far as genetic resources and associated traditional knowledge of the indigenous and local communities located in their respective territories are concerned. The Parties reaffirm their rights and obligations under Article 16 paragraph 3 of the CBD in relation to countries providing genetic resources, to take measures with the aim to provide access to and transfer of technology which makes use of such resources, upon mutually agreed terms. This provision shall apply without prejudice to the rights and obligations under Article 31 of the TRIPS Agreement.

7. The Parties acknowledge the usefulness of requiring the disclosure of the origin or source of genetic resources and associated traditional knowledge in patent applications, considering that this contributes to the transparency about the uses of genetic resources and associated traditional knowledge.

8. The Parties will provide, in accordance with their domestic law, for applicable effects of any such requirement so as to support compliance with the provisions regulating access to genetic resources and associated traditional knowledge, innovations and practices.

9. The Parties will endeavour to facilitate the exchange of information about patent applications and granted patents related to genetic resources and associated traditional knowledge, with the aim that in the substantive examination, particularly in determining prior art, such information can be considered.

10. Subject to the provisions of Chapter 6 (Cooperation) of this Title, the Parties will cooperate on mutually agreed terms in the training of patent examiners in reviewing patent applications related to genetic resources and associated traditional knowledge.

11. The Parties recognise that data bases or digital libraries which contain relevant information constitute useful tools for patentability examination of inventions related to genetic resources and associated traditional knowledge.

12. In accordance with applicable international and domestic law, the Parties agree to collaborate in the application of domestic frameworks on access to genetic resources and associated traditional knowledge, innovations and practices.

13. The Parties may, by mutual agreement, review this Chapter subject to the results and conclusions of multilateral discussions.

## CHAPTER 3

### PROVISIONS CONCERNING INTELLECTUAL PROPERTY RIGHTS

#### SECTION 1

#### TRADEMARKS

#### ARTICLE 202

##### International Agreements

1. The Parties shall abide by the rights and obligations existing under the Paris Convention and the TRIPS Agreement.
2. The European Union and Colombia shall accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989 (hereinafter referred to as the "Madrid Protocol") within 10 years from the signature of this Agreement. Peru shall make all reasonable efforts to adhere to the Madrid Protocol.

3. The European Union and Peru shall make all reasonable efforts to comply with the Trademark Law Treaty adopted in Geneva on 27 October 1994 (hereinafter referred to as the "Trademark Law Treaty"). Colombia shall make all reasonable efforts to adhere to the Trademark Law Treaty.

## ARTICLE 203

### Registration Requirements

Any sign, or any combination of signs, capable of distinguishing goods or services of one undertaking from those of other undertakings, can constitute a trademark in the market. Such signs may be constituted particularly by words, including combinations of words, personal names, letters, numbers, figurative elements, sounds and combinations of colours, as well as by any combination of such signs. Where signs are not intrinsically capable of distinguishing the relevant goods or services, a Party may make registrability dependent upon distinctiveness acquired through use. A Party may require, as a condition of registration, that signs be visually perceptible.

## ARTICLE 204

### Registration Procedure

1. The Parties shall use the classification established in the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks adopted in Nice on 15 June 1957, and its amendments in force, to classify the goods and services to which the trademarks are applied for.
2. Each Party<sup>4</sup> 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. Reasons for the refusal to register a trademark shall be communicated in writing to the applicant, who will have an opportunity to contest such refusal and to appeal the final decision thereof before court. Each Party shall provide for the possibility to oppose trademark applications. Such opposition proceedings shall be adversarial. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.

---

<sup>4</sup> In the case of the EU Party, the obligations provided for in this paragraph, shall apply to the European Union only with respect to its Community trademark.

## ARTICLE 205

### 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 and Article 16.2 and 16.3 of the TRIPS Agreement, effective.

## ARTICLE 206

### Exceptions to the Rights Conferred by a Trademark

1. Provided that the legitimate interests of the right holders of the trademarks and of third parties are taken into account, each Party shall provide as a limited exception<sup>5</sup> to the rights conferred by a trademark, for the fair use in the course of trade of its own name and address, or descriptive terms concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or the rendering of the services or other characteristics of the goods or services.

---

<sup>5</sup> A limited exception is understood to be the one that allows third parties to use in the market a descriptive term without the need for obtaining the consent of the right-holder provided that such use is done in good faith and does not constitute use as a trademark.

2. Each Party shall also provide for limited exceptions allowing a person to use the trademark where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts, provided that it is used in accordance with honest practices in industrial or commercial matters.

## SECTION 2

### GEOGRAPHICAL INDICATIONS

#### ARTICLE 207

##### Scope of Application of this Section

With respect to the recognition and protection of geographical indications which are originating in the territory of a Party, the following applies:

- (a) geographical indications are, for the purposes of this Title, indications consisting of the name of a particular country, region or locality or a name which, without being that of a particular country, region or locality, refers to a particular geographical area, and which identify a product as originating therein where a given quality, reputation or other characteristic of the product is exclusively or essentially due to the geographical environment in which it is produced, with its inherent natural and human factors;

- (b) geographical indications of a Party to be protected by another Party shall only be subject to this Title if they are recognised and declared as such in the country of origin;
- (c) each Party shall protect geographical indications for agricultural and foodstuff products, wines, spirit drinks and aromatised wines listed in Appendix 1 of Annex XIII (Lists of Geographical Indications) in accordance with the procedures referred to in Article 208 as from the entry into force of this Agreement;
- (d) geographical indications for products other than agricultural foodstuffs products, wines, spirit drinks or aromatised wines listed in Appendix 1 of Annex XIII (Lists of Geographical Indications) may be protected according to the laws and regulations applicable in each Party. The Parties acknowledge that geographical indications listed under Appendix 2 of Annex XIII (Lists of Geographical Indications) are protected as geographical indications in the country of origin;
- (e) the use<sup>6</sup> of geographical indications related to products originating in the territory of a Party shall be reserved exclusively for producers, manufacturers or craftsmen with production or manufacturing establishments in the locality or region within the Party identified or evoked by that indication;
- (f) if a Party adopts or maintains a system for authorising the use of geographical indications, such system shall only apply to the geographical indications originating in its territory;

---

<sup>6</sup> For the purposes of this subparagraph, "use" shall mean the production, and/or processing and/or preparation of the product identified by the geographical indication.



- (g) public or private bodies that represent beneficiaries of geographical indications or bodies designated for that purpose shall have at their disposal mechanisms allowing for the effective control over the use of protected geographical indications; and
- (h) geographical indications protected in accordance with this Title shall not, for as long as they remain protected in their country of origin, be considered the common or generic designation of the product that they identify.

## ARTICLE 208

### Established Geographical Indications

1. Having completed an objection procedure and having examined the geographical indications of the European Union listed in the Appendix 1 of Annex XIII (Lists of Geographical Indications) which have been registered by the EU Party, the signatory Andean Countries will protect such geographical indications according to the level of protection laid down in this Section.
2. Having completed an objection procedure and having examined the geographical indications of a signatory Andean Country listed in the Appendix 1 of Annex XIII (Lists of Geographical Indications) which are registered by such signatory Andean Country, the EU Party will protect the same according to the level of protection laid down in this Section.

## ARTICLE 209

### Addition of New Geographical Indications

1. The Parties agree on the possibility to add new geographical indications to Appendix 1 of Annex XIII (Lists of Geographical Indications) after having completed the objection procedure and after having examined the geographical indications as referred to in Article 208.
2. A Party wishing to add a new geographical indication to its list in Appendix 1 of Annex XIII (Lists of Geographical Indications) shall submit to another Party a request in that regard within the framework of the Sub-committee on Intellectual Property.
3. The date of the application of protection shall be the date of transmission of the application to another Party. This exchange of information shall be done under the framework of the Sub-committee on Intellectual Property.

## ARTICLE 210

### Scope of Protection of Geographical Indications

1. The geographical indications of a Party listed in the Appendix 1 of Annex XIII (Lists of Geographical Indications), as well as those added pursuant to Article 209, shall be protected by another Party at least against:
  - (a) any commercial use of such protected geographical indication:
    - (i) for identical or like products not compliant with the product specification of the geographical indication; or
    - (ii) in so far as such use exploits the reputation of the geographical indication;
  - (b) any other non-authorized use<sup>7</sup> of geographical indications other than those identifying wines, aromatized wines or spirits drinks that creates confusion, including even in cases where the name is accompanied by indications such as style, type, imitation and other similar that creates confusion to the consumer; without prejudice to this subparagraph, if a Party amends its legislation in order to protect geographical indications other than those identifying wines, aromatised wines and spirit drinks at a higher level than the protection provided for in this Agreement, that Party shall extend such protection to the geographical indications listed in Appendix 1 of Annex XIII (Lists of Geographical Indications);

---

<sup>7</sup> The term "non authorized use" may cover any misuse, imitation or evocation.

- (c) in case of geographical indications that identify wines, aromatised wines or spirit drinks, any misuse, imitation or evocation, at least, for products of this kind, 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;
- (d) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, or the advertising material relating to the product concerned, liable to convey a false impression as to its origin; and
- (e) any other practice liable to mislead the consumer as to the true origin of the product.

2. Where a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of that third country, and the name is homonymous with a geographical indication of another Party, the latter shall be informed and be given the opportunity to comment before the name becomes protected.

3. The Parties shall notify each other if a geographical indication ceases to be protected in its country of origin.

## ARTICLE 211

### Relationship with Trademarks

1. The Parties shall refuse to register or shall provide for invalidation of a trademark that corresponds to any of the situations referred to in Article 210, paragraph 1, in relation to a protected geographical indication for identical or like products, provided an application to register the trademark is submitted after the date of application for protection of the geographical indication in its territory.
2. Without prejudice to the grounds for refusing the protection of geographical indications provided for in its domestic legislation, no Party shall have the obligation to protect 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.

## ARTICLE 212

### General Rules

1. The Parties may exchange additional information regarding the technical specifications of the products protected by geographical indications in Appendix 1 of Annex XIII (Lists of Geographical Indications) in the Sub-committee on Intellectual Property. Furthermore, the Parties may facilitate the exchange of information regarding the control bodies in their territory.
2. Nothing in this Section shall oblige a Party to protect a geographical indication which is not or ceases to be protected in its country of origin. The Party that is the originating territory of a geographical indication shall notify the other Parties when such geographical indication ceases to be protected in its country of origin.
3. A product specification referred to in this Section shall be that approved, including any amendments also approved, by the authorities of the Party in the territory of which the product originates.

## ARTICLE 213

### Cooperation and Transparency

1. In the context of the Subcommittee on Intellectual Property, a Party may request from another Party information regarding the compliance of products bearing geographical indications protected pursuant to this Section with the respective product specifications and their modifications, as well as contact points for facilitating controls, if necessary.
2. With regard to geographical indications of another Party protected pursuant to this Section, each Party may make publicly available the respective product specifications, or a summary thereof, as well as contact points for facilitating controls.

## ARTICLE 214

This Section shall not prejudice the rights already recognised by the Parties in free trade agreements to third countries.

## SECTION 3

### COPYRIGHT AND RELATED RIGHTS

#### ARTICLE 215

##### Protection Granted

1. The Parties shall protect, in a manner as effective and uniform as possible, the rights of authors in their literary and artistic works. The Parties shall also protect the rights of performers, producers of phonograms and broadcasting organisations, with respect to their performances, phonograms and broadcasts, respectively.
2. The Parties shall comply with existing rights and obligations by virtue of the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 (hereinafter referred to as the "Berne Convention"), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done on 26 October of 1961 (hereinafter referred to as the "Rome Convention"), the WIPO Copyright Treaty (hereinafter referred to as the "WCT"), and the WIPO Performances and Phonograms Treaty (hereinafter referred to as the "WPPT"), both adopted on 20 December 1996.



## ARTICLE 216

### Moral Rights

1. Independently of the economic rights of the author, and even after the transfer of such rights, the author shall have the right to claim, at least, authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, such work, which would be prejudicial to his/her honour or reputation.
2. The rights granted to the author in accordance with paragraph 1 shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed.
3. Independently of the economic rights of a performer, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his/her performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his/her performances that would be prejudicial to his/her reputation. This paragraph applies without prejudice to other moral rights recognised by domestic legislation.

4. The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Party where protection is claimed.
5. Each Party may provide for a degree of protection of moral rights higher than that provided for under this Article.

## ARTICLE 217

### Collective Management Societies

The Parties recognise the importance of collective management societies for copyright and related rights, in order to ensure an effective management of the rights entrusted to them, as well as an equitable distribution of remunerations collected, which are proportional to the utilization of the works, performances or phonograms, in a context of transparency and good management practices, according to the domestic legislation of each Party.

## ARTICLE 218

### Duration of Rights of Authors

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.
2. In the case of a work of joint authorship, the term of protection 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 granted by this Agreement shall expire 70 years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection applicable shall be that laid down in paragraph 1. If the author of an anonymous or pseudonymous works discloses his identity during the above-mentioned period of time, the term of protection applicable shall be that laid down in paragraph 1. No Party shall be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for 70 years.

4. Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 70 years from the end of the calendar year of authorised publication, or, failing such authorised publication, within at least 50 years from the making of the work, 70 years from the end of the calendar year of its making.

5. The term of protection of cinematographic or audiovisual works shall be at least 70 years after the work has been made available to the public with the consent of the author, or, failing such an event, within at least 50 years from the making of such work, at least 70 years after its making. Alternatively, a Party may establish that the term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last person designated as author under domestic law.

## ARTICLE 219

### Duration of Related Rights

1. The term of protection to be granted to performers under this Agreement shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.

2. The term of protection to be granted to producers of phonograms under this Agreement shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, at least 50 years from the end of the year in which the fixation was made.

3. The term of protection granted to broadcasting organisations shall last for at least 50 years from the end of the calendar year in which the broadcast took place.

## ARTICLE 220

### Broadcasting and Communication to the Public

1. For the purposes of this Article:

- "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 organisation or with its consent; and

- "communication to the public" of a performance or a phonogram 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 purposes of paragraph 3, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.
2. Performers shall enjoy the exclusive right of authorising, as regards their performances:
    - (a) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
    - (b) the fixation of their unfixed performances.
  3. Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public. The Parties shall establish in their domestic legislation that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. The Parties may enact domestic legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

4. Each Party shall provide performers with the exclusive right to authorise or prohibit, in relation to their fixed performances:

- (a) direct or indirect reproduction;
- (b) distribution through sale or other transfer of ownership;
- (c) rental to the public of the original and copies thereof; and
- (d) making available to the public by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

5. Where performers have transferred the right of making available or the right of rental, a Party may provide that performers retain the unwaivable right to obtain an equitable remuneration, which may be collected by a collecting society duly authorised by law, in accordance with its domestic law.

6. The Parties may recognise to performers of audiovisual works an unwaivable right to obtain an equitable remuneration for broadcasting or for any communication to the public of their performances fixed, remuneration which may be collected by a collecting society, duly authorised by law, in accordance with domestic law.

7. The Parties may provide in their domestic law, limitations or exceptions to rights of performers of audiovisual works, in certain special cases which do not conflict with the normal exploitation of the performances, and do not unreasonably prejudice the legitimate interests of the performers.

8. Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit the re-transmission of their broadcasts by at least any wireless means.

## ARTICLE 221

### Protection of Technological Measures

The Parties shall comply with the provisions of Article 11 of the WCT and Article 18 of the WPPT.

## ARTICLE 222

### Protection of Rights Management Information

The Parties shall comply with the provisions of Article 12 of the WCT and Article 19 of the WPPT.



## ARTICLE 223

### Resale Right of Artists in Works of Arts

1. Without prejudice to Article 14 *ter* (2) of the Berne Convention, each Party shall provide the author of a work of art, and on his/her death to his/her successors in title, with an inalienable and unwaivable right to receive a royalty based on the sale price obtained for the resale of the work subsequent to the first transfer of the work by the author.
2. The right referred to in paragraph 1 shall apply, in accordance with the domestic legislation, to all acts of resale made by auction or through art market professionals, such as salesrooms, art galleries, or other dealers in works of art.

## SECTION 4

### DESIGNS

#### ARTICLE 224

##### International Agreements

The Parties shall make all reasonable efforts to accede to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs adopted in Geneva on 2 July 1999.

#### ARTICLE 225

##### Requirements for Protection of Designs<sup>8</sup>

1. Each Party shall provide for the protection of independently created designs that are new. When the legislation of a Party so provides, individual character of such designs may also be required. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this Section.

---

<sup>8</sup> For the purposes of this Section, the European Union also grants protection to the unregistered design when it meets the requirements of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, as last amended by Council Regulation (EC) No 1891/2006 of 18 December 2006.

2. A design applied to, or incorporated in, a product which constitutes a component part of a complex product shall only be considered protectable according to paragraph 1 if the component part, once it has been incorporated into the complex product<sup>9</sup>, remains visible during normal use<sup>10</sup> of the latter, and to the extent that those visible features of the component part fulfil in themselves the requirements to be protectable.

## ARTICLE 226

### Rights Conferred by Registration

1. The holder of a registered design shall have the exclusive right at least to prevent third parties not having his/her consent, from making, offering for sale, selling, importing, exporting, stocking such a product or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.

2. The holder of a registered design shall also have the right to take legal action against any person who produces or markets a product whose design only presents minor differences with respect to the protected design or where appearance is the same as the latter protected design.

---

<sup>9</sup> For the purposes of this Section "complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.

<sup>10</sup> For the purposes of this Section "normal use" in this context means use by the end user, excluding maintenance, servicing or repair work.

## ARTICLE 227

### Term of Protection

The duration of protection of an industrial design shall amount to, at least, 10 years from the date of the submission of the application for registration. The Parties may implement a longer term of protection in their domestic legislation.

## ARTICLE 228

### Exceptions

1. The Parties may establish 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. Design protection shall not extend to designs dictated entirely by technical or functional considerations.

3. 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.
4. A design does not confer rights when it is contrary to public order or morality.

## ARTICLE 229

### Relationship to Copyright

The subject matter of protection of a design right may be protected under copyright legislation if the conditions for such protection are met. The extent to which, and the conditions under which, such protection is conferred, including the level of originality required, shall be determined by each Party.

## SECTION 5

### PATENTS

#### ARTICLE 230

1. The Parties shall comply with Articles 2 through 9 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done in Budapest on 28 April 1977 and amended on 26 September 1980.
2. The European Union shall make all reasonable efforts to comply with the Patent Law Treaty, adopted at Geneva on 1 June 2000 (hereinafter referred to as the "PLT"). The signatory Andean Countries shall make all reasonable efforts to accede to the PLT.

3. When the marketing of a pharmaceutical or agricultural chemical product<sup>11</sup> in a Party requires to obtain an authorisation by its competent authorities in such matters, such Party shall make its best efforts to process the corresponding application expeditiously with a view to avoiding unreasonable delays. The Parties shall cooperate and provide mutual assistance to achieve this objective.

4. With respect to any pharmaceutical product that is covered by a patent, each Party may, in accordance with its domestic legislation, make available a mechanism to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the first marketing approval of that product in that Party. Such mechanism shall confer all of the exclusive rights of a patent, subject to the same limitations and exceptions applicable to the original patent.

---

<sup>11</sup> For the purposes of this Title, "agricultural chemical products" means, for the EU Party, active substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user, intended to:

- (a) protect plants or plant products against all harmful organisms or prevent the action of such organisms, in so far as such substances or preparations are not otherwise defined below;
- (b) influence the life processes of plants, other than as a nutrient (e.g. plant growth regulators);
- (c) preserve plant products, in so far as such substances or products are not subject to special Council or Commission provisions on preservatives;
- (d) destroy undesirable plants; or
- (e) destroy parts of plants, check or prevent undesirable growth of plants.

## SECTION 6

### PROTECTION OF DATA OF CERTAIN REGULATED PRODUCTS

#### ARTICLE 231

1. Each Party shall protect undisclosed test or other data related to safety and efficacy of pharmaceutical products<sup>12</sup> and agricultural chemical products, in accordance with Article 39 of the TRIPS Agreement and its domestic legislation.
2. According to paragraph 1, and subject to paragraph 4, when a Party requires, as a condition for approving the marketing of pharmaceutical or of agricultural chemical products which contain new chemical entities, the submission of undisclosed test or other data related to safety and efficacy, that Party shall grant an exclusivity period normally of five years from the date of marketing approval in the territory of that Party for pharmaceutical products, and 10 years for agricultural chemical products, period during which a third party may not commercialise a product based on such data, unless he/she presents proof of the explicit consent of the holder of the protected information or his/her own test data.

---

<sup>12</sup> For Colombia and the EU Party, this protection will include data protection of biological and biotechnology products. For Peru, the protection of the undisclosed information of such products shall be granted against disclosure and the practices that are contrary to honest commercial practices, in accordance with Article 39.2 of the TRIPS Agreement, in absence of specific legislation regarding thereof.



3. For the purpose of this Article, a "new chemical entity" is the one which has not been previously approved in the territory of the Party for its use in a pharmaceutical or chemical agricultural product, pursuant to its domestic legislation. Accordingly, the Parties need not apply this Article with respect to pharmaceutical products that contain a chemical entity that has been previously approved in the territory of the Party.

4. The Parties may regulate:

- (a) exceptions for reasons of public interest, situations of national emergency or extreme urgency, when it is necessary to allow access to those data to third parties; and
- (b) abbreviated marketing approval procedures in their territory, relying on a marketing approval granted by another Party. In such case, the period of exclusive use of the data submitted in connection with obtaining the approval shall begin from the date of the first marketing approval relied on, when the approval is granted within six months from the filing of a complete application.

5. With regard to agricultural chemical products, the Parties may provide procedures which make it possible to remit or refer to the undisclosed information on safety and efficacy related to tests and studies that involve vertebrate animals. During the term of protection, the interested person in using such information shall compensate the holder of the protected information. The costs of such compensation shall be determined in a fair, equitable, transparent and non-discriminatory manner. The right to this compensation shall apply for as long as the protection of the undisclosed information on safety and efficacy lasts.

6. In accordance with the provisions of Article 197 paragraph 5, the protection provided for in this Article does not prevent a Party from adopting measures in response to the abuse of intellectual property rights or practices which unreasonably restrain trade.

## SECTION 7

### PLANT VARIETIES

#### ARTICLE 232

The Parties shall cooperate to promote and ensure the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "UPOV Convention"), as revised on 19 March 1991, including the optional exception to the right of the breeder as referred to in Article 15(2) of such Convention.

## SECTION 8

### UNFAIR COMPETITION

#### ARTICLE 233

1. Each Party shall grant effective protection against unfair competition in accordance with Article 10 *bis* of the Paris Convention. For this purpose, any act carried out in respect of industrial property in the course of trade that is contrary to honest commercial practices shall be considered unfair in accordance with the domestic legislation of each Party.
2. In accordance with the domestic legislation of each Party, this Article may be applied without prejudice to the protection granted under this Title.

## CHAPTER 4

### ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

#### SECTION 1

#### GENERAL PROVISIONS

#### ARTICLE 234

1. Without prejudice to their rights and obligations under the TRIPS Agreement, and in particular of its Part III, each Party shall provide for measures, procedures and remedies as established under this Chapter, which are necessary to ensure the enforcement of intellectual property rights as defined in Article 196, subparagraphs 5(a) to 5(i).
2. The provisions under this Chapter shall include measures, procedures and remedies that are expeditious, effective, and proportionate, and constitute a deterrent to further infringements 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.

3. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

4. This Chapter does not create for the Parties any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, or any obligation with respect to the distribution of resources for enforcement of intellectual property rights and the enforcement of law in general.

## SECTION 2

### CIVIL AND ADMINISTRATIVE REMEDIES AND PROCEDURES

#### ARTICLE 235

Articles 237, 239 and 240 shall apply in respect of acts carried out on a commercial scale, and if permitted by their domestic law, the Parties may apply the measures provided for in such Articles in respect of other acts.

## ARTICLE 236

### Entitled Applicants

Each Party shall recognise as persons entitled to seek application of the measures, initiate the procedures and apply for remedies referred to in this Section and in Part III of the TRIPS Agreement:

- (a) holders of intellectual property rights in accordance with its applicable law;
- (b) all other persons authorised to use those rights, in particular the exclusive licensee and other licensees, in so far as permitted by and in accordance with its 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 its applicable law; and
- (d) professional defense 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 its applicable law.

## ARTICLE 237

### Evidence

Each Party 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 its competent judicial authorities to order the opposing party, where appropriate and upon application by a party, the communication of relevant banking, financial or commercial documents under his/her control, subject to the protection of confidential information.

## ARTICLE 238

### Measures for Preserving Evidence

Each Party shall provide that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, upon application by a person, who has presented reasonably available evidence enough to support his/her claims that his/her intellectual property right has been infringed or is about to be infringed, order prompt, effective and proportionate provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include, among others, the detailed description, with or without the taking of samples, or if the domestic legislation permits, 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 239

### Right of Information

1. Each Party shall provide 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 subparagraphs (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services in question.

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 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 240

### Provisional and Precautionary Measures

1. In accordance with its domestic legislation, each Party shall provide that its judicial authorities may, upon request of the applicant, issue an interlocutory injunction against any party, 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 subject such continuation to the lodging of guarantees intended to ensure the compensation of the right holder.
2. An interlocutory injunction may also be issued to order the seizure or withdrawal of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

## ARTICLE 241

### Corrective Measures

1. Each Party shall take the necessary measures to provide that its competent judicial authorities may order, upon 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 to the infringer, the withdrawal, 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 the destruction of materials and implements principally used in the creation or manufacture of those goods.
2. The judicial authorities shall order that measures, as referred to in paragraph 1, shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

## ARTICLE 242

### Injunctions

Without prejudice to the provisions of Article 44.2 of the TRIPS Agreement, each Party shall provide that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue an injunction against the infringer aimed at prohibiting the continuation of the infringement. Where provided for in the domestic law of a Party, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance<sup>13</sup>.

## ARTICLE 243

### Alternative Measures

Each Party may provide, in accordance with its domestic legislation, that in appropriate cases and upon request of the person liable to be subject to the measures provided for in Article 241 and/or Article 242, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 241 and/or Article 242 if that person acted unintentionally and without negligence, if execution of the measures in question would cause such person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

---

<sup>13</sup> The Parties shall ensure that the measures referred in this paragraph may also apply against those whose services have been used to infringe intellectual property rights to the extent they have been involved in the process.

## ARTICLE 244

### Damages

1. Each Party shall provide that when setting the damages, its judicial authorities:
  - (a) 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 subparagraph (a), 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 an infringing activity, the Parties may provide that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

## ARTICLE 245

### Legal Costs

Each Party shall ensure that reasonable and proportionate legal costs and other procedural expenses, including attorney's fees, incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, except for equity or other reasons, in accordance with domestic legislation.

## ARTICLE 246

### Publication of Judicial Decisions

Each Party shall take the necessary measures to ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, upon 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 247

### 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. This subparagraph shall be applicable even if such name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his/her identity;
- (b) subparagraph (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

## ARTICLE 248

### 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 Section.



## ARTICLE 249

### Border Measures

1. Each Party shall, unless otherwise provided for in this Article, adopt procedures<sup>14</sup> to enable a right holder, who has valid grounds for suspecting that the import, export, or transit of goods infringing a copyright or a trademark right<sup>15</sup> may take place, to lodge an application in writing with competent authorities, for the suspension by the customs authorities of the release into free circulation or for the detention of such goods. The Parties will evaluate the application of these measures for goods suspected of infringing a geographical indication.

---

<sup>14</sup> It is understood by the Parties 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.

<sup>15</sup> For the purposes of this provision, "goods infringing a copyright or a trademark 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 rights of the trademark holder;
  - (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 (i) above;
  - (iii) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in (i) above;
- (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.

2. Each Party shall provide that when the customs authorities, in the course of their actions, have sufficient grounds for suspecting that goods infringe a copyright or a trademark right, such authorities may suspend *ex officio* the release of the goods or detain them in order to enable the right holder to submit, subject to the domestic law of each Party, a judicial or administrative action in accordance with paragraph 1.

3. Any right or obligation established in Part III, Section 4 of the TRIPS Agreement concerning the importer shall be also applicable to the exporter or to the consignee of the goods.

### SECTION 3

#### LIABILITY OF INTERMEDIARY SERVICE PROVIDERS

#### ARTICLE 250

##### Use of Services of Intermediaries

The 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, to enforce copyright and related rights in the digital environment, each Party shall provide for the measures set out in this Section for intermediary service providers where they are in no way involved with the information transmitted.

## ARTICLE 251

### Liability of Intermediary Service Providers: "mere conduit"

1. Where the service that is provided 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, each Party shall ensure that the service provider is not liable for the information transmitted, on condition that such provider does not:

- (a) initiate the transmission;
- (b) select the receiver of the transmission; and
- (c) select or modify the information contained in the transmission.

2. The acts of transmission and 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 a period longer than is reasonably necessary for the transmission.

3. This Section shall not affect the possibility for a court or administrative authority, in accordance with the legal system of each Party, of requiring the service provider to terminate or prevent an infringement.

## ARTICLE 252

### Liability of Intermediary Service Providers: "caching"

1. Where the service that is provided consists of the transmission in a communication network of information provided by a recipient of the service, each Party 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 onward transmission of the information to other recipients of the service upon their request, on condition that such provider:

- (a) does not modify the information;
- (b) complies with conditions on access to the information;
- (c) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;

- (d) 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) 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 Section shall not affect the possibility for a court or administrative authority, in accordance with the legal systems of each Party, of requiring the service provider to terminate or prevent an infringement.

## ARTICLE 253

### Liability of Intermediary Service Providers: "hosting"

1. Where the service that is provided consists of the storage of information provided by a recipient of the service, each Party shall ensure that the service provider is not liable for the information stored upon request of a recipient of the service, on condition that such provider:
- (a) 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) acts expeditiously to remove or to disable access to the information, upon obtaining such knowledge or awareness.

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 Section shall not affect the possibility for a court or administrative authority, in accordance with the legal system of each Party, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for a Party to establish procedures governing the removal or disabling of access to information.

## ARTICLE 254

### No General Obligation to Monitor

1. A Party shall not impose a general obligation on service providers, when providing the services covered by Articles 251, 252 and 253, to monitor the information which they transmit or store, nor a general obligation to actively seek for facts or circumstances indicating illegal activities.

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

## CHAPTER 5

### TRANSFER OF TECHNOLOGY

#### ARTICLE 255

1. The Parties agree to exchange experiences and information on their domestic and international practices and policies affecting transfer of technology<sup>16</sup>. Such exchange shall include, in particular, 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 the promotion of lasting relations between the scientific communities of the Parties, the intensification of activities to promote linkage, innovation and technology transfer between the Parties, including issues such as the relevant legal framework and development of human capital.

---

<sup>16</sup> For greater clarity, transfer of technology includes access to and use of technology as well as the process of generation of technology.

2. The Parties shall facilitate and encourage research, innovation, technological development activities, transfer and diffusion of technology between them, aimed at, among others, enterprises, governmental entities, universities, research and technological centres. The Parties will promote capacity building, exchange and training of personnel in this area to the extent of their possibilities.

3. The Parties shall encourage mechanisms for the participation of entities and experts of their respective systems of science, technology and innovation, in projects and joint research, development and innovation networks, with the purpose of strengthening their capacities in science, technology and innovation. Those mechanisms may include:

- (a) joint research, innovation and technological development activities as well as educational projects;
- (b) visits and exchanges of scientists, researchers, trainees, and technical experts;
- (c) joint organisation of scientific seminars, conferences, symposia and workshops, as well as the participation of experts in those activities;
- (d) joint research, development, and innovation networks;
- (e) exchange and sharing of equipment and materials;



(f) promotion of the evaluation of joint work, and the dissemination of results; and

(g) any other activity agreed upon by the Parties.

4. The Parties should consider establishing mechanisms for the exchange of information about research, development and innovation projects financed from public resources.

5. The EU Party shall facilitate and promote the use of incentives granted to institutions and enterprises in its territory for the transfer of technology to institutions and enterprises from the signatory Andean Countries in order to enable them to establish a viable technological base.

6. Each Party shall make its best efforts to evaluate the possibilities to facilitate the entry and exit from its territory of data and equipment related to or used in research, innovation and technological development activities by the Parties under the provisions of this Article, pursuant to the legislative and regulatory provisions applicable in the territory of each Party, including the regimes regarding export control of dual use products and its related legislation.

## CHAPTER 6

### COOPERATION

#### ARTICLE 256

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Title.
2. Subject to the provisions of Title XIII (Technical Assistance and Trade Capacity-Building), areas of cooperation 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, as well as exchange of experiences between the EU Party and each signatory Andean Country on legislative progress;
  - (b) exchange of experiences between the EU Party and each signatory Andean Country on enforcement of intellectual property rights;
  - (c) capacity-building and exchange and training of personnel;
  - (d) promotion and dissemination of information on intellectual property rights in, inter alia, business circles and civil society as well as public awareness of consumers and right holders;

- (e) enhancement of institutional cooperation, for example between intellectual property offices;  
and
- (f) actively promoting awareness and education of the general public in intellectual property rights policies.

## ARTICLE 257

### Sub-committee on Intellectual Property

1. The Parties hereby establish a Sub-committee on Intellectual Property to follow up on the implementation of the provisions of this Title. The Sub-committee will meet at least once a year, except if the Parties agree otherwise. These meetings may be carried out through any agreed means.
2. The Sub-committee on Intellectual Property will adopt its decisions by consensus. This Sub-committee may adopt its rules of procedure. The Sub-committee on Intellectual Property will be responsible for assessing the information referred to in Article 209 and for proposing to the Trade Committee the modification of Appendix 1 of Annex XIII (Lists of Geographical Indications) as regards to geographical indications.