

## TITLE VI

### INTELLECTUAL PROPERTY

#### CHAPTER 1

#### OBJECTIVES AND PRINCIPLES

#### ARTICLE 228

##### Objectives

The objectives of this Title are to:

- (a) ensure an adequate and effective protection of intellectual property rights in the territories of the Parties, taking into consideration the economical situation and the social or cultural need of each Party;
- (b) promote and encourage technology transfer between both regions in order to enable the creation of a sound and viable technological base in the Republics of the CA Party; and

- (c) promote technical and financial cooperation in the area of intellectual property rights between both regions.

## ARTICLE 229

### 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 Rights (hereinafter referred to as the "TRIPS Agreement"). The provisions of this Title 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. Intellectual Property and Public Health:
  - (a) 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 Title, the Parties shall ensure consistency with this Declaration;

- (b) the Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August, 2003 on Implementation of 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.(a) For the purposes of this Agreement, intellectual property rights embody copyright, including copyright in computer programs and in databases, and related rights; rights related to patents; trademarks; trade names; industrial designs; layout-designs (topographies) of integrated circuits; geographical indications, including designations of origin; plant varieties and protection of undisclosed information;
- (b) for the purposes of this Agreement, as regards unfair competition, protection will be granted in accordance with Article 10*bis* of the Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967) (hereinafter referred to as the "Paris Convention").
4. The Parties recognise the sovereign right of States over their natural resources and the access to their genetic resources in accordance with what is established in the Convention on Biological Diversity (1992). No provision in this Title shall prevent the Parties from adopting or maintaining measures to promote the conservation of biological diversity, the sustainable utilization of its components and the fair and equitable participation in the benefits arising from the utilization of genetic resources, in conformity with what is established in that Convention.

5. The Parties recognise the importance of respecting, preserving and maintaining the indigenous and local communities' knowledge, innovations and practices that involve traditional practices related to the preservation and the sustainable use of biological diversity.

## ARTICLE 230

### Most Favoured Nation and National Treatment

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

- (a) a treatment no less favourable than that it accords to its own nationals with regard to the protection 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 intellectual property.

## ARTICLE 231

### Transfer of Technology

1. The Parties agree to exchange views and information on their practices and policies affecting transfer of technology, both within their respective regions and with third countries, with a view to creating measures to facilitate information flows, business partnerships, and the award of licenses and subcontracting. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer between the Parties, including, among others, issues such as development of human capital and legal framework.
2. The Parties recognise the importance of education and professional training for the transfer of technology which may be accomplished through academic, professional and/or business exchange programs directed to the transmission of knowledge between the Parties<sup>33</sup>.
3. The Parties shall take measures, as appropriate, to prevent or control licensing practices or conditions pertaining to intellectual property rights which may adversely affect the international transfer of technology and that constitute an abuse of intellectual property rights by right holders or an abuse of obvious asymmetries of information in the negotiation of licences.

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<sup>33</sup> The EU Party shall promote that the academic exchanges take the form of grants and that the professional and business exchanges take the form of internships in organisations of the European Union, strengthening of MSMEs, development of innovating industries and creation of professional clinics so that the acquired knowledge may be applied in the Central American region.

4. The Parties recognise the importance of creating mechanisms that strengthen and promote investment in the Republics of the CA Party, especially in innovative and high-tech sectors. The EU Party shall make its best efforts to offer to the institutions and enterprises in its territories incentives destined to promote and to favour the transfer of technology to institutions and enterprises of the Republics of the CA Party, in such a way as to allow them to establish a viable technological platform.

5. The actions described to attain the objectives set forth in this Article are set out in Article 55 of Title VI (Economic and Trade Development) of Part III of this Agreement.

## ARTICLE 232

### 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.

## CHAPTER 2

### STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

#### SECTION A

#### COPYRIGHT AND RELATED RIGHTS

#### ARTICLE 233

##### Protection Granted

The Parties shall comply with:

- (a) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961) (hereinafter referred to as the "Rome Convention");
- (b) the Berne Convention for the Protection of Literary and Artistic Works (1886, lastly amended in 1979) (hereinafter referred to as the "Berne Convention");

- (c) the World Intellectual Property Organisation Copyright Treaty (Geneva, 1996) (hereinafter referred to as the "WCT"); and
- (d) the World Intellectual Property Organisation Performances and Phonograms Treaty (Geneva, 1996) (hereinafter referred to as the "WPPT").

## ARTICLE 234

### Duration of Authors' Rights

The Parties agree that for the calculation of the term of protection of author's rights, the rules established in Article 7 and *7bis* of the Berne Convention shall apply for the protection of literary and artistic works, with the proviso that the minimum duration of the terms of protection defined in paragraphs 1, 2, 3 and 4 of Article 7 of the Berne Convention shall be of seventy years.



## ARTICLE 235

### Duration of Related Rights

The Parties agree that for the calculation of the term of protection of the rights of performers, producers of phonograms and broadcasting organizations, the provisions established in Article 14 of the Rome Convention shall apply with the proviso that the minimum duration of the terms of protection defined in Article 14 of the Rome Convention shall be of fifty years.

## ARTICLE 236

### Collective Management of Rights

The Parties recognise the importance of the performance of the collecting societies, and the establishment of arrangements between them, with the purpose of mutually ensuring easier access and delivery of content between the territories of the Parties, and the achievement of a high level of development with regard to the execution of their tasks.

## ARTICLE 237

### Broadcasting and Communication to the Public<sup>34</sup>

1. For the purpose of this provision, 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 purposes of this Article, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.
2. In accordance with domestic law, the Parties shall provide for performers the exclusive right to authorise or prohibit the broadcasting 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. 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 may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between both categories of right holders.

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<sup>34</sup> A Party may maintain the reservations made under the Rome Convention and the WPPT regarding the rights conferred in this Article and this shall not be construed as a violation of this provision.

4. The Parties shall provide broadcasting organizations with the exclusive right to authorise or prohibit the rebroadcasting by wireless means of their broadcasts, as well as the communication to the public of their television broadcasts, if such communication is made in places accessible to the public against payment of an entrance fee.

5. The Parties may provide in their domestic legislation for limitations or exceptions to the rights set out in paragraphs 2, 3 and 4 only in certain specific cases which do not conflict with a normal exploitation of the subject matter, and do not unreasonably prejudice the legitimate interests of the right holders.

## SECTION B

### TRADEMARKS

#### ARTICLE 238

##### International Agreements

The European Union and the Republics of the CA Party shall make all reasonable efforts to:

- (a) ratify or accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid, 1989); and

- (b) comply with the Trademark Law Treaty (Geneva, 1994).

## ARTICLE 239

### Registration Procedure

The EU Party and the Republics of the CA Party 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 EU Party and the Republics of the CA Party shall also introduce the possibility to oppose trademark applications. Such opposition proceedings shall be contradictory.

## ARTICLE 240

### Well-Known Trademarks

Article 6*bis* of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark, provided that the use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use. For greater certainty, the Parties may also apply this protection to unregistered well known trademarks.

## ARTICLE 241

### Exceptions to the Rights Conferred by a Trademark

The Parties may establish limited exceptions to the rights conferred by a trademark, such as the fair use of descriptive terms. Such exceptions shall take into account the legitimate interests of the owner of the registered trademark and of third parties.

## SECTION C

### GEOGRAPHICAL INDICATIONS

#### ARTICLE 242

##### General Provisions

1. The following provisions apply to the recognition and protection of geographical indications which originate in the territories of the Parties.
2. For the purposes of this Agreement, geographical indications are indications which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

## ARTICLE 243

### Scope and Coverage

1. The Parties reaffirm the rights and obligations established in Part II, Section 3, of the TRIPS Agreement.
2. Geographical indications of a Party to be protected by the other Party shall only be subject to this Article if they are recognised and declared as such in their country of origin.

## ARTICLE 244

### System of Protection

1. The Parties shall maintain or have established systems for the protection of geographical indications in their legislation, by the entry into force of this Agreement in accordance with Article 353, paragraph 5 of Part V.
2. The legislation of the Parties shall contain elements such as:
  - (a) a register listing geographical indications protected in their respective territories;

- (b) 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;
- (c) 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;
- (d) control provisions applying to the production of the good or goods;
- (e) a right for any operator established in the area and who submits to the system of controls to use the protected name provided that the product conforms to the corresponding specification;
- (f) a procedure involving publication of the application 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 245

### Established Geographical Indications

1. By the entry into force of this Agreement, in accordance with Article 353, paragraph 5 of Part V, the Parties shall:<sup>35</sup>
  - (a) have finalised the opposition and examination procedures, at least with respect to those geographical indication applications listed in Annex XVII (List of Names to be Applied for Protection as Geographical Indications in the Territory of the Parties) that were not opposed or for which any opposition was rejected due to formal reasons in the course of national registration proceedings;
  - (b) have initiated the procedures for protecting the geographical indications listed in Annex XVII (List of Names to be Applied for Protection as Geographical Indications in the Territory of the Parties) and the time periods for submitting oppositions have expired, with respect to those geographical indication applications listed in Annex XVII that were opposed, and the oppositions were found to be *prima facie* meritorious in the course of national registration proceedings;
  - (c) protect the geographical indications that have been granted protection as such, according to the level of protection established in this Agreement.

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<sup>35</sup> The obligations from paragraph 1 shall be considered as fulfilled when, in the course of the applicable procedures for protection of a name as a geographical indication:

- (a) the administrative decision rejects the registration of the name; or
- (b) the administrative decision is challenged under the instances established under each Party's domestic legislation.

2. The Association Council at its first meeting shall adopt a decision including in Annex XVIII (Protected Geographical Indications) all names from Annex XVII (List of Names to be Applied for Protection as Geographical Indications in the Territory of the Parties) that have been protected as geographical indications following their successful examination by the Parties' competent national or regional authorities.

## ARTICLE 246

### Protection Granted

1. Geographical indications listed in Annex XVIII (Protected Geographical Indications), as well as those added pursuant to Article 247, shall as a minimum be protected against:
  - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
  - (b) the use of a protected geographical indication for the same products that are not originating from the designated place of the geographical indication in question 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', 'imitation', 'like' or similar;

- (c) any other practice that misleads the consumer as to the true origin of the product or any other use that constitutes an act of unfair competition in the manner set forth in Article 10*bis* of the Paris Convention.
2. A geographical indication which has been granted protection in one of the Parties, pursuant to the procedure under Article 245 cannot, in that Party, be deemed to have become generic, as long as it is protected as a geographical indication in the Party of origin.
3. Where a geographical indication contains within it a name which is considered generic in a Party, the use of that generic name on the appropriate good in that Party shall not be considered to be contrary to this Article.
4. For geographical indications other than wines and spirit drinks, nothing in this Agreement shall be construed to require a Party to prevent continued and similar use of a particular geographical indication of the other Party in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in good faith and in a continuous manner with regard to the same or related goods or services, in the territory of that Party before the date of entry into force of this Agreement.

## ARTICLE 247

### Addition of New Geographical Indications

1. The Parties agree on the possibility of adding additional geographical indications for wines, spirits, agricultural products and foodstuffs to be protected on the basis of the rules and procedures established in this Title, as applicable.

Such geographical indications, following their successful examination by the competent national or regional authorities, shall be included in Annex XVIII (Protected Geographical Indications) in accordance with the relevant rules and procedures for the Association Council.

2. 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 provided that the formal requirements for such applications are fulfilled.

## ARTICLE 248

### Relationship between Geographical Indications and Trademarks

1. The legislation of the Parties shall ensure that the application for registration of a trademark which corresponds to any of the situations listed in Article 246 for like products<sup>36</sup> is refused where such application for registration is submitted after the date of application for registration of the geographical indication in the territory concerned<sup>37</sup>.
2. Similarly, the Parties may, in accordance with their domestic or regional legislation, establish the grounds for rejecting the protection of geographical indications, including the option not to grant protection to 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.
3. The Parties shall maintain the legal means for any natural or legal person having a legitimate interest, to request the cancelation or invalidation of a trademark or a geographical indication giving reasons for such request.

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<sup>36</sup> For the purpose of this Article, the Republics of the CA Party consider that the term "like product" may be understood as "identical or confusingly similar".

<sup>37</sup> For the EU Party, the date of application for protection shall be the date of entry into force of this Agreement for the names listed in Annex XVII.

## ARTICLE 249

### Right of Use of Geographical Indications

Once a geographical indication is protected under this Agreement in a Party different from the Party of origin, the use of such protected name shall not be subject to any registration of users in such Party.

## ARTICLE 250

### Dispute Settlement

No Party shall have any recourse to challenge the final decision issued by a national or regional competent authority regarding the registration or protection of a geographical indication, under Title X (Dispute Settlement) of Part IV of this Agreement. Any claim against the protection of a geographical indication shall be conducted under the available judicial instances established under each Party's domestic or regional legislation.

## SECTION D

### INDUSTRIAL DESIGNS

#### ARTICLE 251

##### International Agreements

The European Union and the Republics of the CA Party shall make all reasonable efforts to adhere to the Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act, 1999).

#### ARTICLE 252

##### Requirements for Protection

1. The Parties shall provide for the protection of independently created designs that are new<sup>38</sup> or original.
2. A design shall be considered to be new if it significantly differs from known designs or combinations of known design features.

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<sup>38</sup> When the legislation of a Party so provides, individual character of such designs may also be required.

3. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Article. Each Party may foresee that unregistered designs made available to the public confer exclusive rights, but only if the contested use results from copying the protected design.

## ARTICLE 253

### 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 into account the legitimate interests of third parties.
2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.
3. A design shall not confer rights when it is contrary to public order or morality.



## ARTICLE 254

### Rights Conferred

1. The owner of a protected design shall have the right to prevent third parties not having the owner's consent from making, selling or importing, articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.
2. Additionally, the Parties shall ensure an effective protection to industrial designs to prevent acts that unduly prejudice the normal exploitation of the design or are not compatible with fair trade practice, in a manner consistent with the provisions of Article 10*bis* of the Paris Convention.

## ARTICLE 255

### Term of Protection

1. The duration of protection available in the EU Party and in the Republics of the CA Party shall amount to at least ten years. Each Party may foresee that the right holder may have the term of protection renewed for one or more periods of five years each, up to the maximum term of protection established in each Party's legislation.
2. Where a Party foresees the protection of unregistered designs, the duration of such protection shall amount to at least three years.

## ARTICLE 256

### Invalidity or Refusal of Registration

1. A design may only be refused for registration or declared invalid for compelling and important reasons, which, subject to each Party's legislation, may comprise:
  - (a) if the design does not correspond to the definition under Article 252, paragraph 1;
  - (b) if, by virtue of a court decision, the right holder is not entitled to the design;
  - (c) 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;
  - (d) if a distinctive sign is used in a subsequent design, and the law of the Party concerned governing that sign confers to the right holder of the sign, the right to prohibit such use;
  - (e) if the design constitutes an unauthorised use of a work protected under the copyright law of the Party concerned;

- (f) if the design constitutes an improper use of any of the items listed in Article 6<sup>ter</sup> of the Paris Convention or of badges, emblems and escutcheons other than those covered by said Article 6<sup>ter</sup> and which are of particular public interest in a Party;
  - (g) if the disclosure of the industrial design is contrary to public order or morality.
2. A Party may provide, as an alternative to the invalidity, that a design subject to the grounds provided for in paragraph 1 may be limited in its use.

## ARTICLE 257

### Relationship to Copyright

A design protected by a design right, registered in a Party in accordance with this Section, may also be eligible for protection under the law of copyright of that Party as from the date on which the design was created or fixed in any form.

## SECTION E

### PATENTS

#### ARTICLE 258

##### International Agreements

1. The Parties shall comply with the Budapest Treaty on the International Recognition of the Deposit of Micro-Organisms for the Purposes of Patent Procedure (1977, amended in 1980).
2. The European Union shall make reasonable efforts to comply with the Patent Law Treaty (Geneva, 2000); and the Republics of the CA Party shall make reasonable efforts to ratify or accede to the above mentioned Treaty.

## SECTION F

### PLANT VARIETIES

#### ARTICLE 259

##### Plant Varieties

1. The Parties shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.
2. The Parties understand that no contradiction exists between the protection of plant varieties and the capacity of a Party to protect and conserve its genetic resources.
3. The Parties shall have the right to provide for exceptions to exclusive rights granted to plant breeders to allow farmers to save, use and exchange protected farm-saved seed or propagating material.

## CHAPTER 3

### ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

#### ARTICLE 260

##### General Obligations

1. The Parties reaffirm their rights and 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 rights.

Those measures, procedures and remedies shall be fair, proportionate and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays<sup>39</sup>.

2. Those measures and remedies shall also be effective 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.

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<sup>39</sup> For the purposes of Article 260 to 272 the notion of "intellectual property rights" shall at least cover the following rights: copyright, including copyright in computer programs and databases, and related rights; rights related to patents; trademarks; industrial designs; lay-out-designs (topographies) of integrated circuits; geographical indications; plant varieties; trade names in so far as these are protected as exclusive rights in the domestic law concerned.

## ARTICLE 261

### Entitled Applicants

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; and
- (b) federations and associations as well as exclusive licensees and other duly authorised licensees, insofar as permitted by and in accordance with the provision of applicable law. The term "licensee" shall include the licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

## ARTICLE 262

### Evidence

The Parties shall take such measures as are necessary, where a right holder has presented reasonably available evidence to support its claim that his intellectual property right has been infringed on a commercial scale and has specified evidence relevant to the substantiation of its claims which lies in the control of the opposing party, to enable the competent judicial authorities to order, where appropriate and, if so foreseen by the applicable law, following an application, that the opposing party must produce such evidence, subject to the protection of confidential information.



## ARTICLE 263

### Measures for preserving Evidence

The judicial authorities shall have the authority, on application by a party who has presented reasonably available evidence to support its claim that its intellectual property right has been or is about to be infringed, to order prompt and effective provisional measures to preserve relevant evidence in regard to 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 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 may 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 264

### Right of Information

The Parties may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

## ARTICLE 265

### Provisional and Precautionary Measures

1. Each Party shall foresee that its judicial authorities have the authority to issue provisional and precautionary measures and execute them expeditiously to prevent imminent infringements of intellectual property rights or to forbid the continuation of alleged infringements. Such measures may be ordered at the request of the right-holder, *inaudita altera parte* or after hearing the defendant, in accordance with the judicial procedural rules of each Party.
2. Each Party shall provide that its judicial authorities have the authority to require the plaintiff to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

## ARTICLE 266

### Corrective Measures

1. Each Party shall provide that:
  - (a) its judicial authorities have the authority to order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, the destruction of the goods that have been found to be pirated or counterfeit, or other appropriate measures to definitively remove those goods from the channels of commerce;
  - (b) its judicial authorities have the authority to order in appropriate cases that materials and implements that have been principally used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, destroyed or, in exceptional circumstances, disposed of outside the channels of commerce, in such a manner as to minimize the risks of further infringements. In considering requests for such corrective measures, the Party's judicial authorities may take into account, *inter alia*, the gravity of the infringement, as well as the interests of third parties holding ownership, possessory, contractual, or secured interests.

2. Each Party may provide that the charitable donation of counterfeit trademark goods and goods that infringe copyright and related rights, if domestic legislation so permits, shall not be ordered by the judicial authorities without the authorisation of the right holder or that such goods may be donated to charity only under certain conditions that may be established according to domestic legislation. In no case shall the simple removal of the trademark unlawfully affixed be sufficient to permit the release of goods into the channels of commerce, except in cases established in domestic legislation and other international obligations.
3. In considering requests for corrective measures, the Parties may grant their judicial authorities the faculty to take into account, *inter alia*, the gravity of the infringement, as well as the interests of third parties holding ownership, possessory, contractual, or secured interests.
4. The judicial authorities shall order that those measures be carried out at the expense of the infringer, except in exceptional circumstances.
5. According to domestic legislation, the Parties may provide for other corrective measures in relation to goods that have been found to be pirated or counterfeit, and with regard to materials and implements principally used in the creation or manufacture of those goods.

## ARTICLE 267

### Damages

The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity. In appropriate cases, the Parties may authorise the judicial authorities to order recovery of profits and/or payment of pre-established damages, even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

## ARTICLE 268

### 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, in accordance with domestic legislation.

## ARTICLE 269

### Publication of Judicial Decisions

The Parties may provide 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 270

### Presumption of Ownership

For the purposes of applying the measures, procedures and remedies provided for under this Title, it shall be sufficient for the right holders of copyrights or related rights with regard to their protected subject matter, in the absence of proof to the contrary, for their name to appear on the work in the usual manner to be regarded as such and consequently to be entitled to institute infringement proceedings.

## ARTICLE 271

### Criminal Sanctions

The Parties shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. The Parties may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

## ARTICLE 272

### Limitations on Liability for Service Providers

The Parties agree that they will maintain the type of limitations of responsibility of service providers they currently foresee in their respective legislation, namely:

- (a) for the EU Party: those foreseen in Directive 2000/31/EC on electronic commerce;

- (b) for the Republics of the CA Party: those adopted domestically in order to comply with their international obligations.

A Party may delay giving effect to the provisions of this Article for a period of no longer than three years, beginning on the date of entry into force of this Agreement.

## ARTICLE 273

### Border Measures

1. The Parties recognise the importance of coordination on customs matters, and therefore engage to promote the application of customs enforcement in relation to counterfeit trademark and pirated copyright goods, specifically through the exchange of information and coordination between the customs administrations of the Parties.
2. The Parties shall, unless otherwise provided for in this Chapter, adopt procedures 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 trademarks, or copyrights may take place, to lodge an application in writing before the competent administrative or judicial authorities, for the suspension by the customs authorities of the release into free circulation or the detention of such goods. 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.



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.

4. Each Party shall provide that its competent authorities may initiate border measures *ex officio* in the cases of import, export and transit.

## CHAPTER 4

### INSTITUTIONAL PROVISIONS

#### ARTICLE 274

##### Sub-Committee on Intellectual Property

1. The Parties hereby establish a Sub-Committee on Intellectual Property, in accordance with Article 348 and as set out in Annex XXI (Sub-Committees), in order to follow-up on the implementation of Article 231 and Section C (Geographical Indications) of Chapter 2 of this Title.

2. The functions of the Sub-Committee shall include:
- (a) recommending to the Association Committee for approval by the Association Council, the modification of the list of geographical indications to Annex XVIII (Protected Geographical Indications);
  - (b) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Agreement, as well as on geographical indications which cease to be protected in their country of origin;
  - (c) promoting technology transfer from the EU Party to the Republics of the CA Party;
  - (d) defining the priority areas in which initiatives shall be directed in the areas of technology transfer, research and development and the build-up of human capital;
  - (e) keeping an inventory or a registry of the programs, activities or initiatives in progress, in the field of intellectual property, with emphasis on transfer of technology;
  - (f) make any relevant recommendations to the Association Committee with regard to matters of their competence; and
  - (g) any other issue instructed by the Association Committee.

## ARTICLE 275

### Cooperation and Technical Assistance on Intellectual Property

The Parties agree that it is in their common interest to promote mutual cooperation and technical assistance initiatives on issues related to this Title. In this sense, the Parties have identified a number of cooperation activities which are set out in Article 55 of Title VI (Economic and Trade Development) of Part III of this Agreement.

## ARTICLE 276

### Final Provisions

1. Panama may delay giving effect to the provisions of Articles 233(c) and (d); 234; 238(b); 240; 252, paragraphs 1 and 2; 255, paragraph 2; 256; 258, paragraph 1; 259; 266, paragraph 4 and 271, for a period no longer than two years, beginning on the date of entry into force of this Agreement.
2. Panama shall adhere to the Patent Cooperation Treaty (Washington 1970, last modified in 2001) within a period no longer than two years, beginning on the date of entry into force of this Agreement.