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Directorate-General for Trade

Directorate C - Sustainable Development, Bilateral Trade Relations
Trade relations with South Asia, Korea and ASEAN

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RESTREINT UE

NOTE FOR THE ATTENTION OF THE 133 COMMITTEE

SUBJECT: *EU-India FTA negotiations: Latest texts on goods, SPS and IPR*

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OBJECTIVE: For information

REMARKS: Member States will find attached for information (and comments if they wish) the following negotiating texts for the FTA negotiations with India:

- 1) Trade in goods: Consolidated text following discussions held at the 5th round of negotiations (Member States already received an earlier version).
- 2) SPS: EC textual proposal (Member States were already consulted on the text via the Potsdam Group).
- 3) IPR:
 - (a) Consolidated text of 9 September 2008 prepared by EC following the 5th round of negotiations (Member States already received an earlier version of the text).
 - (b) Indian comments on the consolidated text of 9 September which considerably lower the overall level of ambition; this will be addressed at the next round.

These texts will be discussed at the next round of negotiations to be held from 17-19 March in Delhi. Further oral information about the preparations of the round will be presented in the 133 Committee of 27 February.

Please note that the documents are labelled as "RESTREINT UE" and should be treated accordingly.

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**CHAPTER X
NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS**

General comments:

Where both parties have indicated agreement on the same text, this is presented without brackets. Where there appears to be a divergence of views, this is reflected in square brackets. When there is a scrutiny reserve, this is indicated by a footnote.

Further proposals providing for additional provisions may be presented at a later stage. These may include, in particular, provisions to further clarify and develop relevant WTO rules incorporated into this chapter and on NTBs. Issues relating to TBT, SPS and trade defence instruments will be considered in separate chapters.

Section A: Common Provisions

ARTICLE X: DEFINITIONS

[To be determined]

ARTICLE X-1: OBJECTIVE

The Parties shall progressively liberalise trade in goods over a transitional period starting from the entry into force of this Agreement, in accordance with the provisions of this Agreement and in conformity with Article XXIV of the GATT 1994.

ARTICLE X-2: SCOPE AND COVERAGE

This Chapter shall apply to trade in goods between the Parties.

ARTICLE X-3: CUSTOMS DUTY

For the purposes of this Chapter, a “customs duty” includes any duty or charge of any kind imposed on or in connection with the importation of a good, including any form of surtax or surcharge imposed on or in connection with such importation. A “customs duty” does not include any:

- (a) charge equivalent to an internal tax imposed consistently with [Article X-8 of this Agreement¹/Article III of GATT]²;
- (b) anti-dumping, countervailing or safeguard duty applied consistently with

¹ Provisions to ensure compliance and transparency as regards such charges to be further discussed.

² Lawyers to check this reference.

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the provisions of the General Agreement on Tariffs and Trade 1994 ('GATT1994'), the WTO Agreement on Implementation of Article VI of the GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Safeguards as relevant; and

- (c) fee or other charge imposed consistently with [Article X- 10 of this Agreement / Article VIII of GATT]³.

ARTICLE X-4: CLASSIFICATION OF GOODS

The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the Harmonised Commodity Description and Coding System ("HS").

Section B: Elimination of Customs Duties

ARTICLE X-5: ELIMINATION OF CUSTOMS DUTIES ON IMPORTS

1. Each Party shall eliminate and/or reduce customs duties on goods originating in the other Party in accordance with the Schedules set out in Annexes ____ and ____ (hereinafter referred to as "Schedules").
2. For each good, the base rate of customs duties, to which the successive reductions are to be applied under paragraph 1, shall be the MFN duties applied on 1st March 2007 for India and 1st July 2007 for EU, as specified in the Schedules.⁴

The reduced customs duty rates calculated in accordance with Annexes () shall be rounded to the first decimal place.

[3. deleted]

4. Upon request by a Party, the parties shall consult each other to consider the possibility of accelerating the reduction and/or elimination of customs duties as set out in the Schedules, or of reducing and/or eliminating customs duties on goods that are excluded from tariff concessions in such Schedules. Such an agreement by the Parties shall replace the terms established for those goods in the Schedules [*India*: in accordance with Articles (Amendments) and each party's applicable domestic legal procedures]⁵.
5. Within 3 years from the entry into force of this Agreement, the Parties shall

³ Lawyers to check this reference.

⁴ India to check wording and revert.

⁵ India to check if this language is needed.

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enter into negotiations with the aim of broadening the scope of gradual elimination of customs duties on goods originating in the Parties. An agreement by the Parties to gradually eliminate a remaining custom duty on a good shall supersede any duty rate specified in the Schedules for that good.

ARTICLE X-6: STANDSTILL

[EU: Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on a good originating in the other Party. This shall not preclude that either Party may:

- (a) raise a customs duty to the level established in its Schedule following a unilateral reduction; or
- (b) maintain or increase a customs duty as authorised by the Dispute Settlement Body of the WTO.]

Comment:

Both sides to consider further. India agreed to provide a list of commodities where applied rates are subject to frequent changes for the reasons explained by India.

~~Section C: Special Regimes~~

~~ARTICLE X-7: TEMPORARY ADMISSION AND OTHER DUTY FREE TREATMENT OF GOODS⁶~~

Section D: Non-Tariff Measures

ARTICLE X-8: NATIONAL TREATMENT

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its Notes and Supplementary Provisions. To this end the obligations contained in Article III of the GATT 1994 including its Notes and Supplementary Provisions are incorporated into and made part of this Agreement.

2. The treatment accorded by a Party to the products of the other Party shall be considered less favourable notably if it results in less advantageous conditions of competition for imported than domestic goods.

[3. EU: Prior to their implementation, each Party shall notify the other of any charges, duties or fees imposed at the time or point of importation as equivalent to an

⁶ This article is moved to the chapter on customs and trade facilitation.

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internal tax or charge, or of any internal tax or charge imposed only on imported goods. This notification shall contain information demonstrating that such taxes, charges, duties or fees are equivalent to an internal tax imposed consistently with paragraphs 1 and 2 above.]

[4. EU: A Party may request information from the other Party on any charges, duties or fees imposed at the time or point of importation as equivalent to an internal tax or charge, or on any internal tax or charge imposed only on imported goods. The requested Party shall ensure maximum transparency and provide the requesting Party all information necessary to establish that such taxes, charges, duties or fees are equivalent to an internal tax imposed consistently with paragraphs 1 and 2 above.]

Comments:

India agreed to provide information relating to additional duties in response to the EC's questions presented at the 4th round.

ARTICLE X-9: IMPORT AND EXPORT RESTRICTIONS

Neither Party may adopt or maintain any prohibition nor restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except as otherwise provided in this Agreement or in accordance with Article XI of the GATT 1994 including its Notes and Supplementary Provisions. To this end Article XI of the GATT 1994 including its Notes and Supplementary provisions are incorporated into and made a part of this Agreement.

ARTICLE X-10: FEES AND OTHER CHARGES ON IMPORTS

Except as otherwise provided in this Agreement, each Party shall ensure that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied consistently with Article X-8 of this Agreement, antidumping, countervailing or safeguard duties applied pursuant to a Party's domestic law and consistently with Chapter __ of this Agreement) imposed on or in connection with importation are based on specific rate and reflect the approximate cost of the services rendered.⁷

ARTICLE X-11: DUTIES, TAXES OR OTHER FEES AND CHARGES ON EXPORTS

[EU: Except as otherwise provided in this Agreement, neither Party may maintain or institute any duties, taxes, fees or other charges imposed on or in connection with the exportation of goods to the other Party, or any internal taxes, fees or other charges on

⁷ India to check wording and revert.

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goods exported to the other Party that are in excess of those imposed on like products destined for internal sale.]

~~ARTICLE X-12: CUSTOMS VALUATION~~⁸

ARTICLE X-13: TRADE RELATED INVESTMENT MEASURE

Neither Party shall apply any Trade Related Investment Measure that is inconsistent with the provisions of Article III or Article XI of the GATT 1994. To this end the WTO Agreement on Trade-Related Investment Measures is incorporated into and made a part of this Agreement.

ARTICLE X-14: LICENSING PROCEDURES

1. The WTO Agreement on Import Licensing Procedures shall be incorporated into and made a part of this Agreement.

[2. Each Party shall apply the provisions contained in the Agreement on Import Licensing Procedures, mutatis mutandi, for any licensing procedures for exports to the other Party.]⁹

ARTICLE X-15: NON-NEW GOODS

[1. EU: Except as otherwise provided in this Agreement, neither Party shall apply to non-new goods requirements or other measures, including enforcement measures, which are more restrictive than to new goods. Non-new goods shall be understood to include notably used and remanufactured goods.

2. This Article shall be without prejudice to the Parties' requirements or other measures with regard to waste and the Parties' right to adopt, maintain or enforce measures in conformity with Article X-18 of this Agreement, inter alia measures necessary for the protection of human health and safety, or the environment.]

ARTICLE X-16: STATE TRADING ENTERPRISES

1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of the GATT 1994, its Notes and Supplementary Provisions and the WTO Understanding

⁸ This article is moved to the chapter on customs and trade facilitation.

⁹ India to check wording and revert.

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on the Interpretation of Article XVII of the GATT 1994, which are hereby incorporated into and made part of this Agreement.

[2. In so far one of the Parties requests information of the other Party on individual cases of state trading enterprises, the manner of their operation and the effect of their operations on bilateral trade, the requested Party shall ensure maximum transparency possible without prejudice to GATT Article XVII.4(d) on confidential information.]¹⁰

ARTICLE X-17: ELIMINATION OF SECTORAL NON-TARIFF MEASURES

1. The Parties shall implement their commitments on sector-specific non-tariff measures on goods in accordance with the commitments set out in Annexes ____ and ____ (hereinafter referred to as "Sectoral Annexes").

2. Except as otherwise provided in this Agreement, on the request of either Party or on the fifth anniversary of the entry into force of this Agreement, whichever is earlier, the Parties shall enter into negotiations with the aim to broadening the scope of their commitments on sector-specific non-tariff measures on goods.

Section E: Specific Exceptions related to Goods

ARTICLE X-18: GENERAL EXCEPTIONS¹¹

1. The Parties affirm their existing rights and obligations under Article XX of the GATT 1994 [*India*: and XXI] and its Notes and Supplementary Provisions, which are hereby incorporated into and made part of this Agreement.

***Comment:** EU prefers to refer to Article XXI under a general security clause within a horizontal chapter of the Agreement as it has wider application. EC provided an example of general security clause.*

2. [*EU*: The Parties understand that before taking any measures provided for in Article XX(i) and Article XX(j) of the GATT 1994, the exporting Party intending to take the measures shall supply the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days, the exporting Party may apply measures under this Article on the exportation of the product concerned. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.]

¹⁰ India to check wording and revert.

¹¹ Lawyers to examine at the 6th round of negotiations.

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3. [India: Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to the other Party, or the goods of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party, or goods of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such goods.]

ARTICLE X-19: RULES OF ORIGIN

Goods covered by the provisions of this Agreement shall be eligible for preferential tariff treatment provided that they satisfy the rules of origin as set out in Chapter (Rules of Origin).

Article X-20: RESTRICTIONS TO SAFEGUARD BALANCE OF PAYMENT¹²

Article XII of the GATT 1994 and the Understanding on the Balance of Payments Provisions of the GATT 1994 shall be incorporated into and made part of this Agreement.

Comment: EC has proposed new text on this topic for the horizontal chapter of the Agreement.

¹² Lawyers to examine at the 6th round of negotiations.

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DRAFT TEXT
SANITARY AND PHYTOSANITARY MEASURES
(EU – India)

Article 1
Objective

1. The objective of this Agreement is to facilitate trade in animals and animal products, plants, plant products and other goods between the Parties, whilst safeguarding public, animal and plant health, by:

- (a) ensuring full transparency as regards sanitary and phytosanitary measures applicable to trade;
 - (b) establishing a mechanism for the recognition of equivalence of sanitary or phytosanitary measures maintained by a Party;
 - (c) recognition of the health status of the Parties and applying the principle of regionalisation;
 - (d) further implementing the principles of the WTO SPS Agreement;
 - (e) using existing OIE, Codex and IPPC standards;
 - (f) establishing mechanisms and procedures for trade facilitation;
 - (g) improving communication and cooperation between the Parties on sanitary and phytosanitary measures.
2. Furthermore, the Parties aim at reaching a common understanding and collaboration between the Parties concerning animal welfare standards.

Article 2
Multilateral obligations

Nothing in this Agreement shall require either Party to act inconsistently with its WTO SPS obligations.

Article 3
Scope

1. This Agreement shall apply to the following measures in so far as they affect trade between the Parties:

- (a) sanitary measures applied by either Party to animals and animal products listed in Appendix X1 and

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(b) phytosanitary measures applied by either Party to plants and plant products and other goods listed in Appendix X2.

2. This Agreement shall also apply to the collaboration on animal welfare standards as listed in Appendix X3.

3. Without prejudice to paragraph 4, this Agreement shall initially not apply to matters listed in Appendix X4.

4. The SPS Management Committee referred in Article 16 may modify this Agreement by means of decision to extend the scope to other sanitary and phytosanitary measures affecting trade between the Parties.

Article 4
Definitions

For the purposes of this Agreement the definitions of WTO SPS Agreement shall apply. Moreover, the following definitions shall apply:

1. "Agreement" means the entire text of this Agreement and all its Appendices;
2. To be completed in accordance with further developments.

Article 5
Competent authorities

The competent authorities of the Parties responsible for the implementation of this Agreement, and their respective competences, are set out in Appendix X5. In accordance with Article 13, the Parties shall inform each other of any significant changes in such information.

Article 6
Recognition for trade of animal health and pest status and regional/zone conditions

A. Recognition of status for animal diseases, infections in animals or pests

1. As regards animal diseases and infections in animals (including zoonoses), the following shall apply:
 - (a) The importing Party shall recognise for trade the animal health status of the exporting Party or its regions/zones as determined by the exporting Party in accordance with Appendix X8, with respect to animal diseases specified in Appendix X7.A.

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- (b) Where a Party considers that it has, for its territory or a region/zone, a special status with respect to a specific animal disease other than those in Appendix X7.A., it may request recognition of this status in accordance with the criteria set out in Appendix X8. The importing Party may request guarantees in respect of imports of animals and animal products, which are appropriate to the agreed status of the Parties.
- (c) The status of the territories or regions, or the status in a sector or sub-sector of the Parties related to the prevalence or incidence of an animal disease other than those in Annex X7.A. or infections in animals, and/or the associated risk, as appropriate, as defined by the OIE, is recognised by the Parties as the basis for trade between them. The importing Party may request guarantees in respect of imports of live animals and animal products, which are appropriate to the defined status in accordance with the recommendations of the standard setting organisations, as appropriate.
- (d) Without prejudice to Articles 8 and 15 and unless the importing Party raises an explicit objection and requests supportive or additional information or consultations and/or verification, each Party shall take without undue delay the necessary legislative and administrative measures to allow trade on the basis of the provisions of paragraphs (a), (b) and (c).

2. As regards pests, the following shall apply:

- (a) The Parties recognise for trade their pest status in respect of pests specified in Appendix X7.B.
- (b) Without prejudice to Article 13 and unless the importing Party raises an explicit objection and requests supportive or additional information or consultations and/or verification, each Party shall take without undue delay the necessary legislative and administrative measures to allow trade on the basis of the provision of paragraph (a).

3. The Parties may modify Appendix X7 by means of a decision adopted by the Committee established in Article 16.

B. Recognition of regionalisation / zoning

4. The Parties recognise the concept of regionalisation, which they agree to apply to trade between them.

5. The Parties agree that regionalisation decisions for terrestrial and aquatic animal diseases listed in Appendix X7.A. and for pests listed in Appendix X7.B. must be taken in accordance with the provisions of Appendix X.8.

- 6. (a) As regards animal diseases and in accordance with the provisions of Article 14, the exporting Party seeking recognition of its regionalisation decision by the

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importing Party shall notify its measures with full explanation and supporting data for its determinations and decisions. Without prejudice to Article 15 and unless the importing Party raises an explicit objection and requests additional information or consultations and/or verification within 15 working days following receipt of the notification, the regionalisation decision so notified shall be construed as accepted.

(b) Consultations referred to in paragraph (a) shall take place in accordance with Article 14.3. The importing Party shall assess the additional information within 15 working days following receipt of the additional information. The verification referred to in subparagraph (a) shall be carried out in accordance with Article 10 and within 25 working days following receipt of the request for verification.

7. (a) As regards pests, each Party shall ensure that trade in plants, plant products and other goods takes account of the pest status in a region recognised by the other Party. A Party seeking recognition of its regionalisation decision by the other Party shall notify its measures with full explanation and supporting data for its determinations and decisions, as guided by the relevant FAO International Standards for Phytosanitary Measures, including N° 4 "Requirements for the establishment of Pest Free Areas", N°8 "Determination of Pest Status in an area", and other International Standards for Phytosanitary Measures as the Parties deem appropriate. Without prejudice to Article 14 and unless a Party raises an explicit objection and requests additional information or consultations and/or verification within three months following the notification, the regionalisation/zoning decision so notified shall be deemed to be accepted.

(b) Consultations referred to in paragraph (a) shall take place in accordance with Article 14(3). The importing Party shall assess the additional information within three months following receipt of the additional information. The verification referred to in paragraph (a) shall be carried out in accordance with Article 10 and within 12 months following receipt of the request for verification, taking into account the biology of the pest and the crop concerned.

8. After finalisation of the procedures of paragraph 4, 5 and 6, and without prejudice to Article 15, each Party shall take, without undue delay, the necessary legislative and administrative measures to allow trade on that basis.

C. Recognition of compartmentalisation

(To be developed by the SPS Committee)

Article 7
Determination of equivalence

1. Equivalence may be recognised in relation to: an individual measure; or a group of measures; or a system applicable to a sector, sub-sector, product or group of products.

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2. In the determination of equivalence, the Parties shall follow the consultation process of paragraph 3. This process shall include the objective demonstration of equivalence by the exporting Party and the objective assessment of this demonstration by the importing Party. This may include an inspection or verification.

3. Upon request of the exporting Party concerning a measure or measures affecting one or more sector(s) or sub-sector(s), the Parties shall, within three months after receipt by the importing Party of such request, initiate the consultation process which includes the steps set out in Appendix X6bis. However, in case of multiple requests from the exporting Party, the Parties, on request of the importing Party, shall agree within the Committee referred to in Article 16 on a time schedule in which they shall initiate and conduct the process referred to in this paragraph.

4. Unless otherwise agreed, the importing Party shall finalise the assessment of equivalence referred in paragraph 3 within 180 days after having received from the exporting Party its demonstration of equivalence, except for seasonal crops when it is justifiable to delay the assessment to permit verification during a suitable period of growth of a crop.

5. The sectors or sub-sectors of priority of each Party for which this process may be initiated, are to be set out, where appropriate, in order of priority in Appendix X4. The Committee referred to in Article 16 may amend, by means of decision, this list, including its order of priority.

6. The importing Party may withdraw or suspend equivalence on the basis of any amendment by one of the Parties of measures affecting equivalence, in accordance with the following provisions:

(a) In accordance with the provisions of Article 13, the exporting Party shall inform the importing Party of any proposal for amendment of its measures for which equivalence of measures is recognised and the likely effect of the proposed measures on the equivalence which has been recognised. Within 30 working days of receipt of this information, the importing Party shall inform the exporting Party whether or not equivalence would continue to be recognised on basis of the proposed measures.

(b) In accordance with the provisions of Article 13, the importing Party shall inform the exporting Party of any proposal for amendment of its measures on which recognition of equivalence has been based and the likely effect of the proposed measures on the equivalence which has been recognised. Should the importing Party not continue to recognise equivalence, the Parties may agree on the conditions to re-initiate the process referred to in paragraph 3 on the basis of the proposed measures.

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7. In case equivalence is formally recognised by the importing party at the end of the process, reduction of physical checks at the frontiers and simplified certificates may be agreed between the Parties.

8. Without prejudice to Article 15, the importing Party may not withdraw or suspend equivalence before the proposed new measures of either Party enter into force.

9. The decision of recognition or withdrawal or suspension of equivalence rests solely with the importing Party acting in accordance with its administrative and legislative framework including, as regards plants, plant products and other goods, appropriate communications in accordance with FAO International Standard for Phytosanitary Measures No 13 "Guidelines for the notification of non-compliances and emergency action" and other International Standards for Phytosanitary Measures, as appropriate. That Party shall provide to the exporting Party in writing full explanation and covered by this Article. In case of non-recognition, withdrawal or suspension of equivalence, the importing Party shall indicate to the exporting Party the required conditions on which the process referred to in paragraph 3 may be reinitiated. When necessary, the importing Party may provide technical assistance to the exporting Party in accordance with the provisions of Article XX of the Free Trade Agreement.

Article 8
Transparency and trade conditions

1. For commodities referred to in Appendixes X1 and X2, the Parties agree to apply general import conditions. Without prejudice to the decisions taken in accordance with Article 6, the import conditions of the importing Party shall be applicable to the total territory of the exporting Party. Upon entry into force of this Agreement and in accordance with the provisions of Article 13, the importing Party shall inform the exporting Party of its sanitary and phytosanitary import requirements for commodities referred to in Appendixes X1 and X2. This information shall include, as appropriate, the models for the official certificates or attestations, as prescribed by the importing Party.

2. (a) For the notification by the Parties of amendments or proposed amendments of the conditions referred to in paragraph 1, they shall comply with the provisions of the SPS Agreement and subsequent decisions, as regards notification of measures. Without prejudice of the provisions of Article 15, the importing Party shall take into account the transport time between the Parties to establish the date of entering into force of the amended conditions referred to in paragraph 1.

(b) If the importing Party fails to comply with these notification requirements, it shall continue to accept the certificate or attestation guaranteeing the previously applicable conditions until 30 days after entering into force of the amended import conditions.

3.

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(a) Within 90 days after recognition of equivalence, the Parties shall take the necessary legislative and administrative measures to implement the recognition of equivalence in order to allow on that basis trade between them of commodities referred to in Appendixes X1 and X2 in sectors and sub-sectors, for which all respective sanitary and phytosanitary measures of the exporting Party are recognised as equivalent by the importing Party. For these commodities, the model for the official certificate or official document required by the importing Party may, then, be replaced by a certificate drawn up as provided for in Appendix X9.

(b) For commodities in sectors or sub-sectors for which one or some but not all measures are recognised as equivalent, trade shall continue on the basis of compliance with the conditions referred to in paragraph 1. Upon request of the exporting Party, the provisions of Article 10 B.3. shall apply.

4. For the commodities referred to in Appendixes X1 and X2, import shall not be subject to specific import authorisations.

5. Upon request of a Party, the other Party shall provide full explanation and supporting data for the determinations and decisions covered by this Article.

Article 9
Certification procedures

1. For purposes of certification procedures, the Parties shall comply with the principles and criteria set out in Appendix X9.

2. Certificates or official documents referred to in Article 8 (1) and (3) shall be issued as set out in Appendix X9.

3. For those commodities referred in Appendixes X1 and X2 for which all respective sanitary and phytosanitary measures of the exporting Party are recognised as equivalent by the importing Party, the model for the official certificate or official document required by the importing Party may, then, be replaced by a certificate drawn up as provided for in Appendix X9.

4. The Committee referred to in Article 16 may agree on rules to be followed in case of electronic certification, withdrawal or replacement of certificates.

Article 10
Trade facilitation

A List of establishments

1. For the import of animal products referred to in Appendix X1, upon request of the exporting Party accompanied by the appropriate guarantees, the importing Party shall provisionally approve processing establishments referred to in Appendix X10 which are

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situated on the territory of the exporting Party, without prior inspection of individual establishments. Such approval shall be consistent with the conditions and provisions set out in Appendix X10. Unless additional information is requested, the importing Party shall take the necessary legislative and/or administrative measures to allow import on that basis within 40 working days after the importing Party has received the request and guarantees.

The initial list of establishments shall be approved in accordance with the provisions of Appendix X10.

2. For the import of animal products referred to in paragraph A 3, the exporting Party shall inform the importing Party of its list of establishments meeting the importing Party's requirements.

B. Alternative measures

3. For conditions affecting trade of the commodities referred to in Article 3 upon request of the exporting Party, the Parties shall enter into consultations in accordance with the provisions of Article 16, in order to agree on alternative or additional import conditions to be applied by the importing Party. Such alternative or additional import conditions may, when appropriate, be based on measures of the exporting Party recognised as equivalent by the importing Party. If agreed, the importing Party shall take the necessary legislative and/or administrative measures to allow import on that basis, within 90 days.

Article 11
Verification procedures

A. Inspections

1. In order to maintain confidence in the effective implementation of the provisions of this Agreement, each Party, within the scope of this Agreement, shall have the right:

(a) to carry out, in accordance with the guidelines of Appendix X12, verification of all or part of the other Party's authorities' total control programme. The expenses of such verification shall be borne by the Party carrying out the verification;

(b) from a date to be determined by the Parties, to receive on its request from the other Party submission of all or part of that Party's total control programme and a report concerning the results of the controls carried out under that programme;

(c) that, for laboratory tests related to commodities of Appendix X1, on request of one Party, the other Party shall participate in the periodical inter-comparative test programme for specific tests organised by the reference laboratory of the requesting Party. The cost of such participation shall be borne by the participating Party.

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2. Either Party may share the results and conclusions of its verifications with third countries, and make them publicly available.
3. The Committee referred to in Article 16 may modify, by means of a decision, Appendix X12, taking due account of relevant work carried out by international organisations.
4. The results of verification may contribute to measures by the Parties or one of the Parties referred to in Articles 6, 7, 8, 9 and 10.

B. Import checks and inspections fees

5. The Parties agree that import checks on importation by the importing Party of consignments from the exporting Party shall respect the principles set out in Appendix X11. The results of these checks may contribute to the verification process referred to in Article 11.A.
6. The frequencies of physical import checks applied by each Party are set out in Appendix X11. A Party may amend these frequencies within its competences and in accordance with its internal legislation, as a result of progress made in accordance with Articles 7 and 8, or as a result of verifications, consultations or other measures provided for in this Agreement. The Committee referred to in Article 16 shall by decision modify Appendix X11.
7. Inspection fees may only cover the costs incurred in by the competent authority for performing import checks. They shall be equitable in relation to fees charged for the inspection of similar domestic products.
8. The importing Party shall inform without delay the exporting Party of any amendment, including the reasons for these amendments concerning the measures affecting import checks and inspection fees and of any significant changes in the administrative conduct for such checks.
9. For the commodities referred in Article 7(7) the Parties may agree to reduce reciprocally the frequency of physical import checks.
10. From a date to be determined by the Committee referred to in Article 16, the Parties may agree on the conditions to approve each other's controls referred to in Article 11.A., with a view to adapt the frequency of import checks or replace import checks. These conditions shall be included in Appendix X11 by a decision of the Committee referred to in Article 16. From that date, the Parties may reciprocally approve each other's controls for certain commodities and, consequently reduce or replace the import checks for these commodities.

Article 12
Collaboration on animal welfare

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1. The Committee referred to in Article 16 will adopt a working plan aiming at reaching a common understanding between the Parties concerning animal welfare issues included in Appendix X3.
2. The committee referred to in Article 16 may modify the Appendix X3 to extend the scope to other animal welfare standards.

Article 13
Information exchange

1. The Parties shall exchange information which is relevant for the implementation of this Agreement on a systematic basis, with a view to develop standards, to provide assurance, to strengthen mutual confidence and to demonstrate the efficacy of the programmes controlled. Where appropriate, this exchange of information may include exchanges of officials.
2. The Parties shall also exchange information on other relevant topics including:
 - (a) significant events concerning commodities covered by this Agreement, including information exchange provided for in Articles 7 and 8;
 - (b) the results of verification inspections provided for in Article 11.A.;
 - (c) the results of import checks provided for in Article 11.B in the case of rejected or non-compliant consignments of animals and animal products;
 - (d) scientific opinions, relevant to this Agreement and produced under the responsibility of a Party;
 - (e) the progress on developing animal welfare standards; and
 - (f) rapid alerts relevant to trade within the scope of this Agreement.
3. The Parties shall provide for the submission of scientific papers or data to the relevant scientific fora to substantiate any views or claims made in respect of a matter arising under this Agreement. Such information shall be evaluated by the relevant scientific fora in a timely manner, and the results of that examination shall be made available to both Parties.
4. When the information referred to in this Article has been made available by notification to the WTO in accordance with the relevant rules or when the above information has been made available on the official, publicly accessible and fee-free web-sites of the Parties, the addresses of which are set out in Appendix X13, the information exchange shall be considered to have taken place.

In addition, for pests of known and immediate danger to the other Party, direct communication to the relevant Party shall be sent by mail or e-mail. The guidance

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provided by FAO International Standard for Phytosanitary Measures No 17 Pest reporting shall be followed.

5. The contact points for the information exchange referred to in this Article are set out in Appendix X13. Information shall be sent by post, fax or e-mail. Information by e-mail shall be signed electronically and shall only be sent between the contact points.

Article 14
Notification and consultation

1. Each Party shall notify the other Party in writing within two working days of any serious or significant public, animal or plant health risk, including any food control emergencies or situations where there is a clearly identified risk of serious health effects associated with the consumption of animal or plant products and in particular concerning:

- (a) any measures affecting regionalisation decisions referred to in Article 6;
- (b) the presence or evolution of any animal disease or pests listed in Appendix X7 A and B;
- (c) findings of epidemiological importance or important associated risks with respect to animal diseases and pests which are not in Appendix X7 A and B or which are new animal diseases or pests; and
- (d) any additional measures beyond the basic requirements of their respective measures taken to control or eradicate animal diseases or pests or protect public health and any changes in prophylactic policies, including vaccination policies.

2. Notifications shall be made to the contact points set out in Appendix X13 in accordance with the provisions of Article 13.

3. Where a Party has serious concerns regarding a risk to public, animal or plant health, consultations regarding the situation shall, on request, take place as soon as possible and, in any case, within 15 working days. Each Party shall endeavour in such situations to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution consistent with the protection of public, animal or plant health.

4. Upon request of a Party, consultations regarding animal welfare shall take place as soon as possible and, in any case, within 20 working days. Each Party shall endeavour, in such situations, to provide all the requested information.

5. Upon request of a Party, consultations referred to in paragraphs 3 and 4 shall be held by video or audio conference. The requesting Party shall ensure the preparation of the

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minutes of the consultation, which shall be formally approved by the Parties. For purposes of this approval, the provisions of Article 13(5) shall apply.

Article 15
Safeguard measures

1. The importing Party may, on serious public, animal or plant health grounds, take provisional measures derogating from this Chapter, necessary for the protection of public, animal or plant health.

For consignments in transport between the Parties, the importing Party shall consider the most suitable and proportionate solution in order to avoid unnecessary disruptions to trade.

2. Should the exporting Party take domestic measures to control any cause likely to constitute a serious hazard to human, animal or plant health, the exporting Party, without prejudice to the provisions of paragraph 1, shall take equivalent measures to prevent introduction of the hazard into the territory of the importing Party.

3. The Party taking the measures shall notify the other Party thereof within one working day of the decision to implement them. Upon request of either Party, and in accordance with the provisions of Article 14(3), the Parties shall hold consultations regarding the situation within 15 working days of the notification. The Parties shall take due account of any information provided through such consultations and shall endeavour to avoid unnecessary disruption to trade, taking into account, where applicable, the outcome of the consultations provided for in Article 14(3).

Article 16
Institutional matters

Establishment of the SPS Management Committee (to be developed).

Article 17
Facilitation of communication

Without prejudice of the provisions of Articles 13, 14, 15 and 16, the Committee referred to in Article 16 may agree on an arrangement to facilitate correspondence, exchange of information and associated documents and procedures and operation of the Committee.

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APPENDIX X1

ANIMAL AND ANIMAL PRODUCTS

(to be completed)

- 1. Live animals**

- 2. Animal products**

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APPENDIX X2

PLANT AND PLANT PRODUCTS

(to be completed)

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- RESTREINT UE -

APPENDIXX3

ANIMAL WELFARE

(To be completed)

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- RESTREINT UE -

APPENDIX X4

**MATTERS TO WHICH THIS AGREEMENT INITIALLY DOES NOT
APPLY**

(To be completed)

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APPENDIX X5

COMPETENT AUTHORITIES

- A. Competent authorities of the EU**
- B. Competent authorities of India**

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APPENDIX X6

**PRIORITY SECTORS OR SUB-SECTORS FOR WHICH EQUIVALENCE
MAY BE RECOGNISED ¹**

(To be completed)

¹ The committee referred to in Article 16 shall establish the list of priority sectors or subsectors which are of importance for the Parties and for which equivalency may be recognised.

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APPENDIX X6 bis

PROCESS OF DETERMINATION OF EQUIVALENCE

(To be completed)

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APPENDIX X7

**LIST OF NOTIFIABLE TERRESTRIAL AND AQUATIC ANIMAL
DISEASES AND PESTS FOR WHICH REGIONAL FREEDOM CAN BE
RECOGNISED**

(To be completed)

- A. Terrestrial and aquatic animal diseases subject to notification, for which the status of the Parties is recognised and for which regionalisation decisions may be taken**
- B Pests subject to notification, for which the status of the Parties is recognised and for which regionalization decisions may be taken**

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APPENDIX X8

REGIONALIZALIZATION AND ZONING

(To be completed)

- A. Terrestrial and aquatic animal diseases**
- B. Pests**
- C. Criteria for the recognition of the special status for animal diseases of the territory or a region of a Party**

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APPENDIX X9

CERTIFICATION

(To be completed)

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APPENDIX X10

**CONDITIONS AND PROVISIONS FOR PROVISIONAL APPROVAL OF
ESTABLISHMENTS**

(To be completed)

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APPENDIX X11

**IMPORT CHECKS AND INSPECTION FEES
(To be completed)**

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APPENDIXX12

GUIDELINES FOR CONDUCTING VERIFICATIONS

(To be completed)

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APPENDIX X13

CONTACT POINTS AND WEB-SITES

A. Contact points

For the EU
For India

B. Contact points for e-mail

For the EU
For India

C. Fee free web-sites

For the EU
For India

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INTELLECTUAL PROPERTY RIGHTS

- DRAFT -

Article 1

Objectives

The objectives of this Chapter are to:

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

Sub-Section 1

Principles

Article 2

Nature and Scope of Obligations

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties including the WTO Agreement on Trade-related Aspects of Intellectual Property (hereinafter called TRIPS Agreement). The provisions of this chapter shall complement and further specify the rights and obligations between the Parties beyond those under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.
2. For the purpose of this Agreement, intellectual property rights embody copyright, including copyright in computer programs and in databases, [EC: *sui generis rights for non original databases*], and rights related to copyright, rights related to patents, trademarks, trade names in so far as these are protected as exclusive property rights in the domestic law concerned,, designs, layout- designs (topographies) of integrated circuits, geographical indications, including designations of origin, indications of source, plant varieties, protection of undisclosed information and the protection against unfair competition as referred to in Article 10*bis* of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).

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Article 3

Transfer of Technology

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

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

Article 4

Exhaustion

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

Sub-Section 2

Standards Concerning Intellectual Property Rights

Article 5

Copyright and Related Rights

Article 5.1 – Protection Granted

The Parties shall comply with:

- a) [EC: Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961);]
- b) Article 1 through 18 of the Berne Convention for the Protection of Literary and Artistic works (1886, last amended in 1979);
- c) [EC: Articles 1 through 14 of the WIPO Copyright Treaty – WCT (Geneva, 1996);]
- d) [EC: Articles 1 through 23 of the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996).]

Article 5.2 - Duration of Authors' Rights

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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 at least 60 years after his death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
4. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within 70 years from their creation, the protection shall terminate.

Article 5.3 - Duration of Related Rights

1. The rights of performers shall expire not less than 50 years after the date of the performance. *[EC: However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.]*
2. The rights of producers of phonograms shall expire not less than 50 years after the fixation is made. *[EC: However, if the phonogram has been lawfully published within this period, the said rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public.]*
3. The rights of producers of the first fixation of a film shall expire not less than 50 years after the fixation is made. *[EC: However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.]* The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.
4. The rights of broadcasting organizations shall expire not less than *[EC: 50 years]* after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 5.4 – Co-operation on Collective Management of Rights

The Parties shall facilitate the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access and delivery of content between the territories of the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works or other protected subject matters. The Parties recognise that it is

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necessary that their respective collecting societies achieve a high level of rationalisation and transparency with respect to the execution of their tasks.

Article 5.5 – Broadcasting and Communication to the Public

1. *For the purpose of this provision:*

[**India** to provide comments]

- a) *[broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also broadcasting; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organization or with its consent;*
- b) *communication to the public means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purpose of Paragraph 3, communication to the public includes making the sounds or representations of sounds fixed in a phonogram audible to the public]*

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

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

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

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

Article 5.6 – Artists' Resale Right in works of arts

[**EC** to provide an alternative text]

1. *[The Parties shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.*

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2. *"Original work of art" means works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art.*

3. *Copies of original works of art as defined in paragraph 2, which have been made in limited numbers by the artist himself or under his authority, shall be considered to be original works of art for the purposes of this Agreement. Such copies will normally have been numbered, signed or otherwise duly authorised by the artist.*

4. *The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.*

5. *The Republic of India and the EC may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a specified minimum amount.*

6. *The royalty shall be payable by the seller. The Parties may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.*

7. *The Parties shall provide that for a period of three years after the resale, the author of an original work of art may require any art market professional mentioned in paragraph 3 to furnish any information that may be necessary in order to secure payment of royalties in respect of the resale.]*

Article 5.7 - Protection of Technological Measures

[India to provide comments as it is in the process of reviewing its legislation]

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

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

- (a) are promoted, advertised or marketed for the purpose of circumvention of, or*
- (b) have only a limited commercially significant purpose or use other than to circumvent, or*
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,*

any effective technological measures.

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

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

Article 5.8 - Protection of Rights Management Information

[India to provide comments as it is in the process of reviewing its legislation]

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

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

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

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

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

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Article 6

Trademarks

Article 6.1 – International Agreements

The European Community and the Republic of India [EC: *shall accede*] to the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989) and comply with the Singapore Treaty on the law of Trademarks (2006) and the *Trademark Law Treaty* (1994).

Article 6.2 – Registration Procedure

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

Article 6.3 – Well-known trademarks

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

Article 6.4 – Exceptions to the Rights Conferred by a Trademark

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

Article 7

Geographical Indications

[EC to provide a revised text on GIs. **India** is ready to discuss high level of protection of GIs along the lines of the EC proposal. India would like the coverage of this article to be extended to non agri GIs.]

Article 7.1

[Recognition of specific geographical indications for agricultural products and foodstuffs other than wine, aromatised wines and spirits]

1. *Having examined the Geographical Indications of Goods (Registration and Protection) Act 1999 and the Geographical Indications of Goods (Registration and*

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Protection) Rules 2002, the Community concludes that these laws, regulations and requirements meet the elements laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications – annexed to this Article].

2. Having examined Council Regulation (EC) No 510/2006, with its implementing rules, for the registration, control, and protection of geographical indications of agricultural products and foodstuffs in the Community, the Republic of India concludes that these laws, rules and procedures meet the elements laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications – annexed to this Article].

3. Having completed an objection procedure and having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of the Community listed in [agricultural products and foodstuff Annex – EC], which have been registered by the European Community under the legislation referred to in paragraph (2), the Republic of India undertakes to register within a period not exceeding [6] months from the entry into force of this Title, the geographical indications of the Community listed in [agricultural products and foodstuff Annex – EC] and to protect the same according to the level of protection laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications –annexed to this Article]

4. Having completed an objection procedure and having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of the Republic of India listed in [agricultural products and foodstuff Annex- the Republic of India], which have been registered by the Republic of India under the legislation referred to in paragraph (1), the European Community undertakes to enter into the EC Register of protected geographical indications and designations of origin, within a period not exceeding [6] months from the entry into force of this Title, the geographical indications of the Republic of India listed in [agricultural products and foodstuff Annex – the Republic of India] and to protect the same according to the level of protection laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications – annexed to this Article]

Article 7.2

Recognition of specific geographical indications for wines, aromatised wines and spirits

1. In the Republic of India, the geographical indications listed in [wine and spirit Annex - EC] shall be reserved and protected for those products referred to in [Article 1(1)(a), 1(2)(a) and 1(3)(a) of wine and spirits protocol] which use these geographical indications in accordance with the relevant laws of the Community on geographical indications.

2. In the European Community, the geographical indications listed in [wine and spirit annex – Republic of India] shall be reserved and protected for those products referred to in [Article 1(1)(b), 1(2)(b) and 1(3)(b) of wine and spirits protocol] which use these geographical indications in accordance with the relevant laws of the Republic of India on geographical indications. [NOTE: other more specific provisions on wine and spirits drinks will be laid down in a separate protocol]

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NOTE: To be inserted here, in a later stage, any provision useful to include those elements not common or not contained in the legislation of one of the party after the common screening made using the annexed "Protocol containing the elements for the registration, control and protection of geographical indications" + any eventual other specific or temporary provision. These provisions may concern both agricultural and foodstuffs GIs and Wine and spirits GIs

Article 7.3

Addition of protected geographical indications

1. *The Parties agree to add new geographical indications to be protected to (the relevant Annex) in accordance with the procedure set out in Article 7.5 [joint committee]*
2. *Subject to paragraph 3, the Parties shall protect new geographical indications within the meaning of paragraph 1 also where a prior trademark exists. A prior trademark shall mean a trademark the use of which corresponds to one of the situations referred to in Protocol X paragraph 6 which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of one of the Parties before the date on which the application for protection of the geographical indication is submitted to the other Party in accordance with Article 7.5.*

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

The use of the protected geographical indication shall be permitted alongside the relevant trademarks.

3. *The Parties shall have no 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 origin or identity of the product.*
4. *If geographical indications are homonymous, protection shall be granted to each indication provided that it has been used in good faith. The Parties shall mutually decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.*

Article 7.4

Use of geographical indications on the Internet

The Parties recognise the need for a clear legal framework for geographical indications owners who wish to use their geographical indications on the Internet and to participate in the development of electronic commerce which includes provisions addressing whether the use of a sign on the Internet has contributed to the usurpation, evocation, acquisition in bad

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faith or infringement of a geographical indication or whether such use constitutes an act of unfair competition, and determine the remedies, including the eventual transfer or cancellation of the domain name. In this respect, the Parties shall endeavour to apply the Joint Recommendation concerning the protection of marks, and other industrial property rights in signs, on the Internet, as adopted by WIPO at the Thirty-Sixth Series of Meetings of the Assemblies of the Member States of WIPO on 24 September to 3 October 2001.

Article 7.5

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

- 1. Both Parties agree to set up a [Joint Committee] consisting of representatives of the Community and the Republic of India with the purpose of intensifying their co-operation and dialogue on geographical indications.*
- 2. The [Joint Committee] may make recommendations and adopt decisions by consensus. It shall meet at the request of either of the Parties, alternatively in the European Community and in the Republic of India, at a time and a place and in a manner (which may include by videoconference) mutually determined by the Parties, but no later than [90] days after the request.*
- 3. The [Joint Committee] may decide:*
 - a) To modify Annexes [agricultural products and foodstuffs - EC...] and [agricultural products and foodstuffs – the Republic of India] to add individual geographical indications of a Party that, after the relevant procedure referred to in Article 7.1.3 and 7.1.4, are also determined by the other Party to constitute geographical indications and will therefore be protected in the territory of that other Party. The period of [six] months referred to in Article 7.1.3 shall apply from the date of the decision of the [Joint Committee].*
 - b) After having completed an objection procedure, to modify Annexes [wines, aromatised wines, spirits - EC] and [wines, aromatised wines, spirits – Republic of India] to add individual geographical indications of a Party.*
 - c) To modify [...] and [...] to remove individual geographical indications that cease to be protected in the Party of origin or that, in accordance with the applicable legislation, no longer meet the conditions to be considered a geographical indication in the other Party.*
 - d) That a reference to a law or regulation in a provision of this Agreement should be taken to be a reference to that law or regulation as amended and in force at a particular date after the date of signature of this Agreement.*
- 4. The [Joint Committee] shall also see to the proper functioning of Article 7 and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:*
 - a) Exchanging information on legislative and policy developments on GIs*
 - b) Exchanging information on individual geographical indications for the purpose of considering their protection in accordance with this agreement.*
 - c) Exchanging information between the Parties to optimise the operation of this Agreement.*

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5. *The [Joint Committee] may discuss any matter of mutual interest in the area of geographical indications.*

Protocol (mentioned in articles 7.1 and 7.2)
Elements for the registration, control, and protection of geographical indications

1. *a register listing geographical indications protected in the territory;*
2. *an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;*
3. *a requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;*
4. *control provisions applying to production;*
5. *enforcement of the protection of registered names by intervention of the public authorities on their own initiative. They shall also enforce such protection at the request of an interested party;*
6. *legal provisions laying down that a registered name*
 - (a) *may be used by any operator marketing the agricultural product or foodstuff conforming to the corresponding specification;*
 - (b) *is protected against:*
 - *any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;*
 - *any misuse, imitation or evocation, 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" or similar;*
 - *any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;*

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- *any other practice liable to mislead the consumer as to the true origin of the product.*

7. *a rule that protected names may not become generic;*
8. *provisions concerning the registration, which may include refusal of registration, of terms homonymous or partly homonymous with registered terms, terms customary in common language as the common name for goods, terms comprising or including the names of plant varieties and animal breeds. Such provisions shall take into account the legitimate interests of all parties concerned;*
9. *rules concerning relation between geographical indications and trademarks providing for a limited exception to the rights conferred under trademark law to the effect that the existence of a prior trademark shall not be a reason to prevent the registration and use of a name as a registered geographical indication except where by reason of the trademark's renown and the length of time it has been used, consumers would be misled by the registration and use of the GI on products not covered by the trademark.*
10. *a right for any producer established in the area who submits to the system of controls to produce and use the product labelled with the protected name;*
11. *an objection procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.]*

[**India** to provide a text on CBD]

Article 8

Designs

[Regarding unregistered designs provisions, **India** to further consider this]

Article 8.1 - International Agreements

The European Community and the Republic of India [EC: *shall accede*] to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs (1999).

Article 8.2 – Definition

[**India** to provide comments]

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

Article 8.3 - Requirements for Protection

- RESTREINT UE -

1. The European Community and the Republic of India shall provide for the protection of independently created designs that are new and that are original or **[India to provide comments - have individual character]**.

2. A design shall be considered to be new if no identical design has been made available to the public:

(a) *[in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;]*

(b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

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

3. **[EC: A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public]:**

(a) *[in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;]*

(b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

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

4. For the purpose of applying paragraphs 2 and 3, a design shall be deemed to have been made available to the public if it has been published following registration or *[otherwise]*, or exhibited, used in trade or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the territory in which protection is claimed, before the date of filing of the application for registration or, if priority is claimed, the date of priority. *[In the case of unregistered design protection, a design shall be deemed to have been made available to the public if it has been published, exhibited, used in trade or otherwise disclosed in such way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the territory in which protection is claimed].*

The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

5. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Article. *[Unregistered designs made*

- RESTREINT UE -

available to the public shall confer the same exclusive rights, but only if the contested use results from copying the protected design.]

Article 8.4 - Exceptions

1. The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
2. *[Without prejudice to existing domestic legislation on unregistered design rights, design protection shall not extend to designs solely dictated by technical or functional considerations.]*
3. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

Article 8.5 - Rights Conferred

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

Article 8.6 - Term of Protection

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

Article 8.7 - Invalidity or Refusal of Registration

1. The Parties may only provide that a design is refused for registration or declared invalid in the following cases:
 - a) if the design does not correspond to the definition under Article 8.2;
 - b) if it does not fulfil the requirements of Article 8.3 and Article 8.4
 - c) if, by virtue of a court decision, the right holder is not entitled to the design;
 - d) if the design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if a priority is claimed, the date of priority of the design, and which is protected from a date prior to the said date by a registered design or an application for a design;

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- e) if a distinctive sign is used in a subsequent design, and the law of the Party concerned governing that sign confers on the right holder of the sign the right to prohibit such use;
- f) if the design constitutes an unauthorised use of a work protected under the copyright law of the signatory concerned;
- g) if the design constitutes an improper use of any of items listed in Article 6~~ter~~ of the Paris Convention for the Protection of Industrial Property or of badges, emblems and escutcheons other than those covered by the said Article 6~~ter~~ and which are of particular public interest in a Party.

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

Article 8.8 - Relationship to Copyright

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

Article 9

Patents

Article 9.1 - International Agreements

The Parties shall comply with:

- a) Articles 1 through 52 of the Patent Co-operation Treaty (Washington, 1970, last modified in 2001);
- b) [EC: Articles 1 through 16 of the Patent Law Treaty (Geneva, 2000);]
- c) Articles 2 through 9 of the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, amended in 1980).

Article 9.2 – Patents and Public Health

1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.

2. The Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the

- RESTREINT UE -

TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005. Nothing in this Agreement shall be construed as to impair the capacity of the Parties to promote access to medicines.

[EC : Article 9.3 – Supplementary Protection Certificates

1. *The Parties recognise that medicinal and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective markets, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.*

2. *The Parties shall provide for a further period of protection for a product which is protected by a patent and which has been subject to an administrative authorisation procedure that period being equal to the period referred to in paragraph 1 second sentence above, reduced by a period of five years.*

3. *Notwithstanding paragraph 2 and the extension for paediatric use for pharmaceutical products, the duration of the further period of protection may not exceed five years.]*

Article 10

[EC to provide a revised text]

[Protection of Data Submitted to Obtain a Marketing Authorisation

1. *The Parties will implement a comprehensive system to guarantee the confidentiality, undisclosed and non-reliance of data submitted for registration purpose of medicinal products.*

2. *The Parties will enact and implement legislation ensuring that any information submitted to obtain marketing approval, i.e., registration, of pharmaceutical products will remain undisclosed to third parties and benefit from a period of [...] years of protection against unfair commercial use starting from the date of grant of marketing approval in the Parties, i.e. that during this period of protection, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, will without the explicit consent of the person or entity who submitted this data, rely directly or indirectly on such data in support of an application for medicinal product approval/registration.*

3. *During this [...] -year period, any subsequent application for marketing approval or registration would not be granted, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant. Products registered without submission of such data would be removed from the market until the requirements were met.*

4. *In addition, the [...] -year period referred shall be extended to a maximum of [...] years if, during the first [...] years after obtaining the registration in the Parties, the registration*

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holder obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.]

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

Article 11

[India to provide comments]

[Plant Varieties]

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

Sub-Section 3

Enforcement of Intellectual Property Rights

Article 12

General Obligations

1. Both Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights¹. Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
2. Those measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 13

¹ For the purposes of Articles 13 to 25 the notion of "intellectual property rights" should at least cover the following rights: copyright; rights related to copyright; [EC: *sui generis right of a database maker*]; rights of the creator of the topographies of a semi conductor product; trademark rights; design rights; patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected as exclusive rights in the national law concerned.

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Entitled Applicants

1. The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this section and in Part III of the TRIPS Agreement:

- a) the holders of intellectual property rights in accordance with the provisions of the applicable law,
- b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,
- c) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

2. The Parties may 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, intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

Article 14

Evidence

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

Article 15

Measures for Preserving Evidence

The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by an entity who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the 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 16

Right of Information

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

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

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

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

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

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

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Article 17

Provisional and Precautionary Measures

1. The Parties shall ensure that the judicial authorities may, at the request of the applicant issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.
2. An interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.
3. In the case of an infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

Article 18

Corrective Measures

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

Article 19

Injunctions

The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring

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penalty payment, with a view to ensuring compliance. The Parties shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

Article 20

Alternative Measures

The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 18 'corrective measures' and/or Article 19 'injunctions', the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 18 "corrective measures" and/or Article 19 "injunctions" if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article 21

Damages

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

Article 22

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.

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Article 23

Publication of Judicial Decisions

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

Article 24

Presumption of 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 for the holders of rights related to copyright with regard to their protected subject matter, 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.

Article 25

Criminal Sanctions

[EC to provide a text]

Article 26

[India to provide comments as this issue is currently subject to review]

Liability of Intermediary Service Providers

Article 26.1 – Use of Intermediaries' Services

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

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Article 26.2 - Liability of Intermediary Service Providers: "Mere Conduit"

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

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

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

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

Article 26.3 - Liability of Intermediary Service Providers: "Caching"

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

- a) the provider does not modify the information;
- b) the provider complies with conditions on access to the information;
- c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

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

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Article 26.4 - Liability of Intermediary Service Providers: Hosting

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

- a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

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

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

Article 26.5 - No General Obligation to Monitor

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 26.2, 26.3 and 26.4, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

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

Article 27

Border Measures

1. The Parties shall, unless otherwise provided for in this section, adopt procedures² to enable a right holder, who has valid grounds for suspecting that the importation, [EC: *exportation, re-exportation, entry or exit of the customs territory, placement under a suspensive procedure or placement under a free zone or a free warehouse*] of goods infringing an intellectual property right³ may take place, to lodge an application in writing

² 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 For the purposes of this provision, "goods infringing an intellectual property right" means:

(a) "counterfeit goods", namely:

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with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation or the retain of such goods.

2. Any rights or duties established in Section 4 of the TRIPS Agreement concerning the importer shall be also applicable to [EC: *the exporter*] or to the holder of the goods.

Article 28

[India to provide comments]

[Codes of Conduct and Forensic Co-operation]

1. *Parties shall encourage*

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

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

2. *Parties shall co-operate in order to identify forensically illegal optical discs which are produced by plants located in the Republic of India. The competent authorities of the Republic of India shall collect and store samples for each production line in a database to which trade or professional associations or organizations shall have access, under the conditions defined by Indian law, to compare samples found on the market. In exchange, these associations or organizations may use, at the request of the competent authority of the*

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- (i) goods, including packaging, bearing without authorisation a trademark identical to the trademark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the trademark holder's rights;
 - (ii) any trademark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as the goods referred to in point (i);
 - (iii) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in point (i);
 - (b) "pirated goods", namely goods which are or contain copies made without the consent of the holder, or of a person duly authorised by the holder in the country of production, of a copyright or related right or design right, regardless of whether it is registered in national law;
 - (c) goods which, according to the law of the Party in which the application for customs action is made, infringe:
 - (i) a patent;
 - (ii) a plant variety right;
 - (iii) a design;
 - (iv) a geographical indication

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Republic of India, their international sample database to help that competent authority determine the source of the illegal product that it has reason to believe was produced outside the Republic of India]

Sub-Section 4

Article 29

Co-operation

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

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

- a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement; exchange of experiences in the European Community and the Republic of India on legislative progress;
- b) exchange of experiences in the European Community and the Republic of India on enforcement of intellectual property rights;
- c) exchange of experiences in the European Community and the Republic of India on central and sub-central enforcement by customs, police, administrative and judiciary bodies; co-ordination to prevent exports of counterfeit goods, including with other countries;
- d) capacity-building; exchange and training of personnel;
- e) promotion and dissemination of information on intellectual property rights in, *inter alia*, business circles and civil society; public awareness of consumers and right holders;
- f) enhancement of institutional co-operation, for example between intellectual property offices.

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INTELLECTUAL PROPERTY RIGHTS

- DRAFT -

Article 1

Objectives

The objectives of this Chapter are to:

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

Sub-Section 1

Principles

Article 2

Nature and Scope of Obligations

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

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

Article 3

Transfer of Technology

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

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

Article 4

Exhaustion

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

Sub-Section 2

Standards Concerning Intellectual Property Rights

Article 5

Copyright and Related Rights

Article 5.1 – Protection Granted

The Parties shall comply with:

- a) [EC: Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961);]
- b) Article 1 through 18 of the Berne Convention for the Protection of Literary and Artistic works (1886, last amended in 1979);
- c) [EC: Articles 1 through 14 of the WIPO Copyright Treaty – WCT (Geneva, 1996);]
- d) [EC: Articles 1 through 23 of the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996).]

Article 5.2 - Duration of Authors' Rights

- RESTREINT UE -

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 at least 60 years after his death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
4. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within 70 years from their creation, the protection shall terminate.

Article 5.3 - Duration of Related Rights

1. The rights of performers shall expire not less than 50 years after the date of the performance. *[EC: However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.]*
2. The rights of producers of phonograms shall expire not less than 50 years after the fixation is made. *[EC: However, if the phonogram has been lawfully published within this period, the said rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public.]*
3. The rights of producers of the first fixation of a film shall expire not less than 50 years after the fixation is made. *[EC: However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.]* The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.
4. The rights of broadcasting organizations shall expire not less than *[EC: 50 years]* after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 5.4 – Co-operation on Collective Management of Rights

The Parties shall facilitate the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access and delivery of content between the territories of the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works or other protected subject matters. The Parties recognise that it is

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necessary that their respective collecting societies achieve a high level of rationalisation and transparency with respect to the execution of their tasks.

Article 5.5 – Broadcasting and Communication to the Public

1. *For the purpose of this provision:*

[**India** to provide comments]

- a) *[broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also broadcasting; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organization or with its consent;*
- b) *communication to the public means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purpose of Paragraph 3, communication to the public includes making the sounds or representations of sounds fixed in a phonogram audible to the public.]*

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

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

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

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

Article 5.6 – Artists' Resale Right in works of arts

[**EC** to provide an alternative text]

1. *[The Parties shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.]*

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2. *"Original work of art" means works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art.*

3. *Copies of original works of art as defined in paragraph 2, which have been made in limited numbers by the artist himself or under his authority, shall be considered to be original works of art for the purposes of this Agreement. Such copies will normally have been numbered, signed or otherwise duly authorised by the artist.*

4. *The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.*

5. *The Republic of India and the EC may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a specified minimum amount.*

6. *The royalty shall be payable by the seller. The Parties may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.*

7. *The Parties shall provide that for a period of three years after the resale, the author of an original work of art may require any art market professional mentioned in paragraph 3 to furnish any information that may be necessary in order to secure payment of royalties in respect of the resale.]*

Article 5.7 - Protection of Technological Measures

[India to provide comments as it is in the process of reviewing its legislation]

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

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

- (a) are promoted, advertised or marketed for the purpose of circumvention of, or*
- (b) have only a limited commercially significant purpose or use other than to circumvent, or*
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,*

any effective technological measures.

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

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

Article 5.8 - Protection of Rights Management Information

[India to provide comments as it is in the process of reviewing its legislation]

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

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

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

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

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

INDIA: ON ARTICLE 5, COMMENTS OF THE MINISTRY CONCERNED ARE AWAITED.

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Article 6

Trademarks

Article 6.1 – International Agreements

~~The European Community and the Republic of India [EC: shall accede] to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989) and comply with the Singapore Treaty on the law of Trademarks (2006) and the Trademark Law Treaty (1994).~~

The parties shall endeavour to encourage accession to the Protocol relating to the Madrid Agreement concerning the International Registration of Marks (1989) and comply with the Singapore Treaty on the law of Trade Marks (2006) and the Trade marks Law Treaty (1994)

Article 6.2 – Registration Procedure

The parties shall provide an opportunity to oppose a trade marks application, communication of a written and reasoned order to the applicant, appeal to the appellate authority against the refusal order and make publicly available database of trade mark applications and registrations.

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

Article 6.3 – Well-known trademarks

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

The Parties shall cooperate for effective protection of well-known trade marks as per provisions of existing laws.

Article 6.4 – Exceptions to the Rights Conferred by a Trademark

~~The Parties shall provide for the fair use of descriptive terms, including geographical indications, as a limited exception to the rights conferred by a trademark. They may provide other limited exceptions, provided that such limited exceptions take account of the legitimate interests of the owner of the trademark and of third parties.~~
The Parties shall endeavour to provide for the fair use of descriptive terms, including geographical indications as a limited exception to the rights conferred by a trade mark taking into account the legitimate interests of the owner of the trade mark and of third parties as per provisions of existing laws.

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Article 7

Geographical Indications

~~[EC to provide a revised text on GIs. India is ready to discuss high level of protection of GIs along the lines of the EC proposal. India would like the coverage of this article to be extended to non agri GIs.]~~

Article 7.1

~~[Recognition of specific geographical indications for agricultural products and foodstuffs other than wine, aromatised wines and spirits]~~

~~1. Having examined the Geographical Indications of Goods (Registration and Protection) Act 1999 and the Geographical Indications of Goods (Registration and Protection) Rules 2002, the Community concludes that these laws, regulations and requirements meet the elements laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications annexed to this Article].~~

~~2. Having examined Council Regulation (EC) No 510/2006, with its implementing rules, for the registration, control, and protection of geographical indications of agricultural products and foodstuffs in the Community, the Republic of India concludes that these laws, rules and procedures meet the elements laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications annexed to this Article].~~

~~3. Having completed an objection procedure and having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of the Community listed in [agricultural products and foodstuff Annex EC], which have been registered by the European Community under the legislation referred to in paragraph (2), the Republic of India undertakes to register within a period not exceeding [6] months from the entry into force of this Title, the geographical indications of the Community listed in [agricultural products and foodstuff Annex EC] and to protect the same according to the level of protection laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications annexed to this Article].~~

~~4. Having completed an objection procedure and having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of the Republic of India listed in [agricultural products and foodstuff Annex the Republic of India], which have been registered by the Republic of India under the legislation referred to in paragraph (1), the European Community undertakes to enter into the EC Register of protected geographical indications and designations of origin, within a period not exceeding [6] months from the entry into force of this Title, the geographical indications of the Republic of India listed in [agricultural products and foodstuff Annex the Republic of India] and to protect the same according to the level of protection laid down in Protocol [Protocol containing the elements for the registration, control and protection of geographical indications annexed to this Article].~~

Article 7.2

~~Recognition of specific geographical indications for wines, aromatised wines and spirits~~

1. ~~In the Republic of India, the geographical indications listed in [wine and spirit Annex – EC] shall be reserved and protected for those products referred to in [Article 1(1)(a), 1(2)(a) and 1(3)(a) of wine and spirits protocol] which use these geographical indications in accordance with the relevant laws of the Community on geographical indications.~~

2. ~~In the European Community, the geographical indications listed in [wine and spirit annex – Republic of India] shall be reserved and protected for those products referred to in [Article 1(1)(b), 1(2)(b) and 1(3)(b) of wine and spirits protocol] which use these geographical indications in accordance with the relevant laws of the Republic of India on geographical indications. [NOTE: other more specific provisions on wine and spirits drinks will be laid down in a separate protocol]~~

NOTE: ~~To be inserted here, in a later stage, any provision useful to include those elements not common or not contained in the legislation of one of the party after the common screening made using the annexed "Protocol containing the elements for the registration, control and protection of geographical indications" + any eventual other specific or temporary provision. These provisions may concern both agricultural and foodstuffs GIs and Wine and spirits GIs~~

Article 7.3

Addition of protected geographical indications

1. ~~The Parties agree to add new geographical indications to be protected to (the relevant Annex) in accordance with the procedure set out in Article 7.5 [joint committee]~~

2. ~~Subject to paragraph 3, the Parties shall protect new geographical indications within the meaning of paragraph 1 also where a prior trademark exists. A prior trademark shall mean a trademark the use of which corresponds to one of the situations referred to in Protocol X paragraph 6 which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of one of the Parties before the date on which the application for protection of the geographical indication is submitted to the other Party in accordance with Article 7.5.~~

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

~~The use of the protected geographical indication shall be permitted alongside the relevant trademarks.~~

3. ~~The Parties shall have no 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 origin or identity of the product.~~

4. ~~If geographical indications are homonymous, protection shall be granted to each indication provided that it has been used in good faith. The Parties shall mutually decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. A homonymous name which~~

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

~~Article 7.4~~

~~Use of geographical indications on the Internet~~

~~The Parties recognise the need for a clear legal framework for geographical indications owners who wish to use their geographical indications on the Internet and to participate in the development of electronic commerce which includes provisions addressing whether the use of a sign on the Internet has contributed to the usurpation, evocation, acquisition in bad faith or infringement of a geographical indication or whether such use constitutes an act of unfair competition, and determine the remedies, including the eventual transfer or cancellation of the domain name. In this respect, the Parties shall endeavour to apply the Joint Recommendation concerning the protection of marks, and other industrial property rights in signs, on the Internet, as adopted by WIPO at the Thirty Sixth Series of Meetings of the Assemblies of the Member States of WIPO on 24 September to 3 October 2001.~~

~~Article 7.5~~

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

~~1. Both Parties agree to set up a [Joint Committee] consisting of representatives of the Community and the Republic of India with the purpose of intensifying their co-operation and dialogue on geographical indications.~~

~~2. The [Joint Committee] may make recommendations and adopt decisions by consensus. It shall meet at the request of either of the Parties, alternatively in the European Community and in the Republic of India, at a time and a place and in a manner (which may include by videoconference) mutually determined by the Parties, but no later than [90] days after the request.~~

~~3. The [Joint Committee] may decide:~~

- ~~a) To modify Annexes [agricultural products and foodstuffs — EC...] and [agricultural products and foodstuffs — the Republic of India] to add individual geographical indications of a Party that, after the relevant procedure referred to in Article 7.1.3 and 7.1.4, are also determined by the other Party to constitute geographical indications and will therefore be protected in the territory of that other Party. The period of [six] months referred to in Article 7.1.3 shall apply from the date of the decision of the [Joint Committee].~~
- ~~b) After having completed an objection procedure, to modify Annexes [wines, aromatised wines, spirits — EC] and [wines, aromatised wines, spirits — Republic of India] to add individual geographical indications of a Party.~~
- ~~c) To modify [...] and [...] to remove individual geographical indications that cease to be protected in the Party of origin or that, in accordance with the applicable~~

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~~legislation, no longer meet the conditions to be considered a geographical indication in the other Party.~~

- ~~d) That a reference to a law or regulation in a provision of this Agreement should be taken to be a reference to that law or regulation as amended and in force at a particular date after the date of signature of this Agreement.~~

~~4. The [Joint Committee] shall also see to the proper functioning of Article 7 and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:~~

- ~~a) Exchanging information on legislative and policy developments on GIs~~
~~b) Exchanging information on individual geographical indications for the purpose of considering their protection in accordance with this agreement.~~
~~c) Exchanging information between the Parties to optimise the operation of this Agreement.~~

~~5. The [Joint Committee] may discuss any matter of mutual interest in the area of geographical indications.~~

Protocol (mentioned in articles 7.1 and 7.2)

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

- ~~1. a register listing geographical indications protected in the territory;~~
- ~~2. an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;~~
- ~~3. a requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;~~
- ~~4. control provisions applying to production;~~
- ~~5. enforcement of the protection of registered names by intervention of the public authorities on their own initiative. They shall also enforce such protection at the request of an interested party;~~
- ~~6. legal provisions laying down that a registered name~~

~~(a) may be used by any operator marketing the agricultural product or foodstuff conforming to the corresponding specification;~~

~~(b) is protected against:~~

~~— any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are~~

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~~comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;~~

~~—any misuse, imitation or evocation, 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" or similar;~~

~~—any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;~~

~~—any other practice liable to mislead the consumer as to the true origin of the product.~~

~~7. a rule that protected names may not become generic;~~

~~8. provisions concerning the registration, which may include refusal of registration, of terms homonymous or partly homonymous with registered terms, terms customary in common language as the common name for goods, terms comprising or including the names of plant varieties and animal breeds. Such provisions shall take into account the legitimate interests of all parties concerned;~~

~~9. rules concerning relation between geographical indications and trademarks providing for a limited exception to the rights conferred under trademark law to the effect that the existence of a prior trademark shall not be a reason to prevent the registration and use of a name as a registered geographical indication except where by reason of the trademark's renown and the length of time it has been used, consumers would be misled by the registration and use of the GI on products not covered by the trademark.~~

~~10. a right for any producer established in the area who submits to the system of controls to produce and use the product labelled with the protected name;~~

~~11. an objection procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.]~~

REVISED TEXT AWAITED FROM EC.

[India to provide a text on CBD]

TEXT AWAITED FROM THE MINISTRY CONCERNED.

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Article 8

Designs

[Regarding unregistered designs provisions, **India** to further consider this]

Article 8.1 - International Agreements

~~The European Community and the Republic of India [EC: shall accede] to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs (1999).~~

Article 8.2 – Definition

[**India** to provide comments]

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

only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark.

Article 8.3 - Requirements for Protection

1. — ~~The European Community and the Republic of India shall provide for the protection of independently created designs that are new and that are original, or [India to provide comments — have individual character].~~

2. —

3. — ~~A design shall be considered to be new if no identical design has been made available to the public:~~

(a) — ~~[in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;]~~

(b) — ~~in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.~~

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

4. — ~~[EC: A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public;]~~

(a) — ~~[in the case of an unregistered design, before the date on which the design for which protection is claimed has first been made available to the public;]~~

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~~(b) in the case of a registered design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.~~

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

~~4. For the purpose of applying paragraphs 2 and 3, a design shall be deemed to have been made available to the public if it has been published following registration or [otherwise], or exhibited, used in trade or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the territory in which protection is claimed, before the date of filing of the application for registration or, if priority is claimed, the date of priority. [In the case of unregistered design protection, a design shall be deemed to have been made available to the public if it has been published, exhibited, used in trade or otherwise disclosed in such way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the territory in which protection is claimed].~~

~~The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.~~

~~5. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Article. [Unregistered designs made available to the public shall confer the same exclusive rights, but only if the contested use results from copying the protected design.]~~

Article 8.4 - Exceptions

1. The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

~~2. [Without prejudice to existing domestic legislation on unregistered design rights, design protection shall not extend to designs solely dictated by technical or functional considerations.]~~

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

Article 8.5 - Rights Conferred

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

Article 8.6 - Term of Protection

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1. The duration of protection available in the European Community and in the Republic of India following registration shall amount to at least 5 years. The right holder may have the term of protection renewed for one or more periods of five years each, up to a total term of 25 15 years from the date of filing.

~~2. [The duration of protection available in the European Community and in the Republic of India for unregistered designs shall amount to at least three years as from the date on which the design was made available to the Public in one of the signatories.]~~

Article 8.7 - Invalidity or Refusal of Registration

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

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

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

Article 8.8 - Relationship to Copyright

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

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Article 9

Patents

Article 9.1 - International Agreements

The Parties shall comply with:

a) Articles 1 through 52 of the Patent Co-operation Treaty (Washington, 1970, last modified in 2001);

b) ~~[EC: Articles 1 through 16 of the Patent Law Treaty (Geneva, 2000);]~~

c) Articles 2 through 9 of the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, amended in 1980).

Article 9.2 – Patents and Public Health

1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.

2. The Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005. Nothing in this Agreement shall be construed as to impair the capacity of the Parties to promote access to medicines.

~~[EC : Article 9.3 – Supplementary Protection Certificates~~

~~1. The Parties recognise that medicinal and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective markets, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.~~

~~2. The Parties shall provide for a further period of protection for a product which is protected by a patent and which has been subject to an administrative authorisation procedure that period being equal to the period referred to in paragraph 1 second sentence above, reduced by a period of five years.~~

~~3. Notwithstanding paragraph 2 and the extension for paediatric use for pharmaceutical products, the duration of the further period of protection may not exceed five years.]~~

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Article 10

[EC to provide a revised text]

[Protection of Data Submitted to Obtain a Marketing Authorisation]

~~1. — The Parties will implement a comprehensive system to guarantee the confidentiality, undisclosed and non-reliance of data submitted for registration purpose of medicinal products.~~

~~2. — The Parties will enact and implement legislation ensuring that any information submitted to obtain marketing approval, i.e., registration, of pharmaceutical products will remain undisclosed to third parties and benefit from a period of [...] years of protection against unfair commercial use starting from the date of grant of marketing approval in the Parties, i.e. that during this period of protection, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, will without the explicit consent of the person or entity who submitted this data, rely directly or indirectly on such data in support of an application for medicinal product approval/registration.~~

~~3. — During this [...] year period, any subsequent application for marketing approval or registration would not be granted, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant. Products registered without submission of such data would be removed from the market until the requirements were met.~~

~~4. — In addition, the [...] year period referred shall be extended to a maximum of [...] years if, during the first [...] years after obtaining the registration in the Parties, the registration holder obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.]~~

~~**[EU Note: Similar provision on data protection for chemical products will be inserted]**~~

Article 11

[India to provide comments]

[Plant Varieties]

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

~~**COMMENTS OF MINISTRY CONCERNED ARE AWAITED.**~~

The parties shall cooperate to promote and reinforce the protection of plant varieties based on the bilateral agreement or~~n~~ international agreements to which both parties are signatories.

Sub-Section 3

Enforcement of Intellectual Property Rights

Article 12

General Obligations

1. ~~Both Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights¹. Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.~~

2. ~~Those measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.~~

The Parties shall provide measures, procedures and remedies to ensure the enforcement of the Intellectual Property Rights as provided in the existing laws.

Article 13

Entitled Applicants

1. ~~The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this section and in Part III of the TRIPS Agreement:~~

a) ~~the holders of intellectual property rights in accordance with the provisions of the applicable law;~~

b) ~~all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law;~~

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

2. ~~The Parties may 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,~~

¹ For the purposes of Articles 13 to 25 the notion of "intellectual property rights" should at least cover the following rights: copyright; rights related to copyright; [EC: *sui generis right of a database maker*]; rights of the creator of the topographies of a semi conductor product; trademark rights; design rights; patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected as exclusive rights in the national law concerned.

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

The Parties may recognize the holders of Intellectual Property Rights, persons authorized to use those rights including licensees and the professional bodies having a right to represent holders of IPRs in so far as permitted by and in accordance with the provisions of the applicable law as persons entitled to seek application of measures, procedures and remedies.

Article 14

Evidence

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

The Parties may take such measures in case of an infringement of intellectual property rights committed on a commercial scale to enable the competent judicial authorities to pass appropriate orders.

Article 15

Measures for Preserving Evidence

~~The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by an entity who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the 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.~~

The Parties shall provide measures to enable judicial authorities to pass appropriate order for preservation of relevant evidence in respect of the alleged infringement including seizure of infringing goods, material used, etc.

Article 16

Right of Information

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

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

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

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

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

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

The Parties may provide that the competent judicial authorities are empowered to pass such orders as are appropriate depending upon the circumstances of the case keeping in view the general civil and criminal law prevailing in India.

Article 17

Provisional and Precautionary Measures

- 1. ~~The Parties shall ensure that the judicial authorities may, at the request of the applicant issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory~~

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~~injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.~~

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

~~3. — In the case of an infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information. The Parties shall endeavour to provide that the judicial authorities may issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right or any other relief depending upon the circumstances of the case in so far as permitted by and in accordance with the provisions of the applicable law.~~

Article 18

Corrective Measures

~~1. — The Parties shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the recall, definitive removal from the channels of commerce or destruction of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order destruction of materials and implements principally used in the creation or manufacture of those goods.~~

~~The judicial authorities shall order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so. The Parties may provide that the competent authorities may order damages for infringement and removal from the channels of commerce or destruction of goods found to be infringing an intellectual property right including destruction of materials and implement used in the manufacture of those goods depending upon the circumstances of the case in so far as permitted by and in accordance with the provisions of the applicable law. -~~

Article 19

Injunctions

~~The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. The Parties shall also ensure that right~~

~~holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.~~The Parties may provide measures to issue injunction to prohibit the continuation of the infringement of an intellectual property right and the right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

Article 20

Alternative Measures

~~The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 18 'corrective measures' and/or Article 19 'injunctions', the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 18 "corrective measures" and/or Article 19 "injunctions" if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory. The Parties may provide for measures to order pecuniary compensation to be paid to the injured party in case a person has acted unintentionally and without negligence.~~

Article 21

Damages

~~1. — The Parties shall ensure that when the judicial authorities set the damages:~~

~~a) — they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement ; or~~

~~b) — as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.~~

~~2. — Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.~~

The Parties may provide that the judicial authorities while awarding damages take into account all aspects of the case and the circumstances involved.

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Article 22

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. The Parties shall endeavour to provide that costs are awarded against the unsuccessful parties in appropriate cases having regard to all the circumstances of the case and the conduct of the parties.~~

Article 23

Publication of Judicial Decisions

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

Article 24

Presumption of 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 for the holders of rights related to copyright with regard to their protected subject matter, 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.

INDIA : COMMENTS OF MINISTRY CONCERNED ARE AWAITED.

Article 25

Criminal Sanctions

[EC to provide a text]

Article 26

Article 26.3 – Liability of Intermediary Service Providers: “Caching”~~[India to provide comments as this issue is currently subject to review]~~

Liability of Intermediary Service Providers

Article 26.1 – Use of Intermediaries' Services

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

Article 26.2 – Liability of Intermediary Service Providers: "Mere Conduit"

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

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

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

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

Article 26.3 – Liability of Intermediary Service Providers: "Caching"

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

- a) the provider does not modify the information;
- b) the provider complies with conditions on access to the information;

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- c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

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

Article 26.4 - Liability of Intermediary Service Providers: Hosting

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

- a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

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

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

~~*Article 26.5 - No General Obligation to Monitor*~~

~~1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 26.2, 26.3 and 26.4, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.~~

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

Article 27

Border Measures

1. The Parties shall, unless otherwise provided for in this section, adopt procedures² to enable a right holder, who has valid grounds for suspecting that the importation, ~~[EC: exportation, re-exportation, entry or exit of the customs territory, placement under a suspensive procedure or placement under a free zone or a free warehouse]~~ of goods infringing an intellectual property right³ may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation ~~or the retain of such goods.~~

2. Any rights or duties established in Section 4 of the TRIPS Agreement concerning the importer shall be also applicable to ~~[EC: the exporter]~~ the holder of the goods.

Article 28

[India to provide comments]

~~[Codes of Conduct and Forensic Co-operation]~~

~~1. Parties shall encourage:~~

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

² 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 For the purposes of this provision, "goods infringing an intellectual property right" means:

(a) "counterfeit goods", namely:

- (i) goods, including packaging, bearing without authorisation a trademark identical to the trademark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the trademark holder's rights;
- (ii) any trademark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as the goods referred to in point (i);
- (iii) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in point (i);

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

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

- (i) a patent;
- (ii) a plant variety right;
- (iii) a design;
- (iv) a geographical indication

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

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

Sub-Section 4

Article 29

Co-operation

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

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

- a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement; exchange of experiences in the European Community and the Republic of India on legislative progress;
- b) exchange of experiences in the European Community and the Republic of India on enforcement of intellectual property rights;
- c) exchange of experiences in the European Community and the Republic of India on central and sub-central enforcement by customs, police, administrative and judiciary bodies; co-ordination to prevent exports of counterfeit goods, including with other countries;
- d) capacity-building; exchange and training of personnel;
- e) promotion and dissemination of information on intellectual property rights in, *inter alia*, business circles and civil society; public awareness of consumers and right holders;
- f) enhancement of institutional co-operation, for example between intellectual property offices.

