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## **[INDIA: Article 1**

### **Context**

1. The Parties agree that fostering innovation and creativity improves competitiveness and is a crucial element in their economic partnership, in achieving sustainable development, promoting trade between them.
2. Parties also recognise that the protection and enforcement of intellectual property, in a manner appropriate to and justified by their levels of development, plays a key role in fostering creativity, innovation and competitiveness.

## **Article 2**

### **Objectives**

The objectives of this Chapter are to:

- (a) achieve a level of protection and enforcement of intellectual property rights that is consistent with the TRIPS Agreement, results in the transfer and dissemination of technology in an adequate and effective manner and is conducive to the social and economic welfare and sustainable development of the Parties;
- (b) prevent the abuse of intellectual property rights and resort to practices that unreasonably restrain trade or adversely affect the transfer of technology .

## **[EU: 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 ]*

**[INDIA: Sub Section 1**

### **Innovation**

**Article 3 to 7 deleted**

**[EU: Intellectual Property]**

### **Principles**

**Article 8**

### **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 both are parties including the WTO Agreement on Trade-related Aspects of Intellectual Property (hereinafter called TRIPS Agreement). *[EU: 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. EU and India agree that the principles set out in Article 8 of the TRIPS Agreement apply to this Section. **[INDIA:** The Parties also agree that an adequate and effective enforcement of intellectual property rights should take account of the development needs of India, provide a balance of rights and obligations between right holders and users and allow both parties to protect public health and nutrition.] Nothing in this Agreement shall be construed as to impair the capacity of the Parties to promote access to medicines.

3. **[INDIA:** For the purpose of this Agreement, intellectual property rights shall refer to those rights mentioned in the TRIPS Agreement.]

*[EU: For the purpose of this Agreement, intellectual property rights embody copyright, including copyright in computer programs and in databases, and rights related to copyright, rights related to patents, trademarks, trade names in so far as*

*these are protected as exclusive property rights in the domestic law concerned, designs, layout- designs (topographies) of integrated circuits, geographical indications, including designations of origin, indications of source, plant varieties, protection of undisclosed information and the protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).]*

## Article 9

### 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. 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.

[INDIA: 2. The parties agree to take measures, as appropriate, to prevent or control licensing practices or conditions pertaining to intellectual property rights which may adversely affect the international transfer of technology and that constitute an abuse of intellectual property rights by right holders or an abuse of obvious information asymmetries in the negotiation of licences.

3. EC Party shall facilitate and promote the use of incentives granted to institutions and enterprises in its territory for the transfer of technology to institutions and enterprises of the Republic of India.

4. The Parties shall ensure that the legitimate interests of the intellectual property right holders are protected as per the respective domestic laws.

## Article 10

### Exhaustion

The Parties shall be free to establish the exhaustion of intellectual property rights as per Article 6 of the TRIPS agreement.

## Standards Concerning Intellectual Property Rights

### Article 11

### Copyright and Related Rights

#### *Article 11.1 – Protection Granted*

The Parties shall comply with:

Article 1 through 21 of the Berne Convention for the Protection of Literary and Artistic works and appendix thereto (1971);

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

[EU: Articles 1 through 14 of the WIPO Copyright Treaty – WCT (Geneva, 1996);]

[EU: Articles 1 through 23 of the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996).]

#### *Article 11.2 - Duration of Authors' Rights*

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 [EU: at least] 60 years after his death, irrespective of the date when the work is lawfully made available to the public.

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.

In the case of anonymous or pseudonymous works, the term of protection shall run for [EU: at least] 60 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.

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 [EU: *at least*] 60 years from their creation, the protection shall terminate.

### *Article 11.3 - Duration of Related Rights*

The rights of performers shall expire not less than 50 years after the date of the performance. [EU: *However, if a fixation of the performance is lawfully published or lawfully communicated to the public within 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 rights of producers of phonograms shall expire not less than 60 [EU: 50] years after the publication is made. [EU: *However, if the phonogram has been lawfully published within this period, the said rights shall expire not less than 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 not less than 50 years from the date of the first lawful communication to the public.*]

The rights of producers of the first publication [EU: *fixation*] of a film shall expire not less than 60 years after the publication [EU: *fixation*] is made. [EU: *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.

The rights of broadcasting organizations shall expire not less than 25 years [EU: *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 11.4 – Co-operation on Collective Management of Rights*

The Parties shall [EU take such reasonable measures as may be available to them to] 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. [EU: The Parties shall take such reasonable measures as may be available to them to achieve a high level of rationalisation and transparency with regard to the execution of the tasks of their respective collecting societies.]

**[EU: Article 11.4 bis – Reproduction right**

The Parties shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

- (a) for authors, of their works;
- (b) for performers, of fixations of their performances;
- (c) for phonogram producers, of their phonograms;
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films;
- (e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.]

**Article 11.5 – Broadcasting and Communication to the Public [EU: Right of communication to the public of works and right of making available<sup>1</sup> to the public other subject matter]**

1. The Parties shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. The Parties shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

(a) for performers, of fixations of their performances;

(b) for phonogram producers, of their phonograms;

(c) for the producers of the first fixations of films, of the original and copies of their films;

(d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. The Parties agree that the rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.]

Article 11.5 bis – Broadcasting and communication to the public of other subject matter

[EU: The Parties shall provide for broadcasting organizations the exclusive right to authorize or prohibit the re-transmission of their broadcasts by wire or over the air, 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.

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

**[EU: Article 11.7 – Resale Right**

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.*
2. *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.*
3. *The Parties 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 certain minimum amount.*
4. *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.*
5. *The protection provided may be claimed to the extent permitted by the Party where this protection is claimed. The procedure for collection and the amounts shall be matter for determination by national legislation.]*

**[EU: Article 11.8 – Protection of Technological Measures**

1. *The parties 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. The parties 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.

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 related right as provided for by national legislation. 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 as set out in article 11.12, 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.

#### **[EU: Article 11.9 – Protection of Rights Management Information**

1. The parties shall provide 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 related rights as provided by national legislation.*

*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.*

*3. Paragraph 2, 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.*

#### ***EU Article 11.10 – Exceptions and limitations***

*1. The Parties may provide for limitations or exceptions to the rights set out in the Articles 11.1 – 11.9 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 holders in accordance with the conventions and international Treaties to which they are Parties.*

*2. The Parties shall provide that temporary acts of reproduction referred to in Article 11.4 bis, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable*

*(a) a transmission in a network between third parties by an intermediary, or*

*(b) a lawful use*

*of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 5.4 bis.]*

## Trademarks

### Article 12.1 – International Agreements

[INDIA: The parties shall endeavour to encourage accession to the Protocol relating to the Madrid Agreement concerning the International Registration of Marks (1989).

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

### Article 12.2 – Registration Procedure

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

[EU: The European Union 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 [INDIA: Court an appellate authority]. The European Union and the Republic of India shall also [INDIA: introduce the possibility to provide for] opposing trademark applications. Such opposition proceedings shall be adversarial. The European Union and the Republic of India shall [INDIA: endeavour to] provide a publicly available electronic database of trademark applications and trademark registration. ]

### Article 12.3 – Well-known trademarks

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

[EU: The Parties shall ~~cooperate for effective make~~ 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~~ INDIA:./

In determining whether a trademark is well-known, Parties shall apply the Joint Recommendation adopted by the assembly of the Paris union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO) at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO September 20 to 29, 1999.]

#### Article 12.4 – Exceptions to the Rights Conferred by a Trademark

[INDIA: The Parties shall provide for the fair use of descriptive terms 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.]

[EU: The Parties shall provide for the fair use of descriptive terms, ~~including geographical indications names,~~ INDIA: 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 13

#### Geographical Indications

##### Article 13.1

##### Scope

[INDIA: Each Party shall ensure in their national laws adequate and effective means to protect geographical indications.]

[EU: This Article applies to the recognition and protection of geographical indications which are originating in the territories of the Parties.

Geographical indications of a Party to be protected by the other Party, shall only be subject to this Article if covered by the scope of the legislation referred to in Article 13.2.]

**Established geographical indications**

- [EU: 1. Having examined the [relevant law on GI protection of India] legislation listed in Annex I Part A the European Union concludes that this legislation meets the elements laid down in Annex I Part B.
2. Having examined the European Union legislation listed in Annex I Part A, India concludes that these laws meet the elements laid down in Annex I Part B.
3. Having completed an objection procedure [in accordance with the criteria set out in Annex II] and having examined the geographical indications of the European Union listed in Annex III which have been registered by the European Union under the legislation referred to in paragraph 2, India undertakes to protect the same according to the level of protection laid down in this Agreement.
4. Having completed an objection procedure [in accordance with the criteria set out in Annex II] and having examined the geographical indications of India listed in Annex III which are registered by India under the legislation referred to in paragraph 1, The European Union undertakes to protect them according to the level of protection laid down in this Agreement.
5. Geographical indications for wines, aromatised wines and spirit drinks are laid down in Annex IV.]

1. [INDIA: Products that have been registered and protected as Geographical indications under the Council Regulation (EC) No 510/2006 with its implementing rules will be registered under the Geographical Indications of Goods (Registration and Protection) Act 1999 and the Geographical Indications of Goods (Registration and Protection) Rules 2002, after the application is examined and processed as per the Indian Act and the Rules.

2. Products that have been registered and protected as Geographical indications under the Geographical Indications of Goods (Registration and Protection) Act 1999 and the Geographical Indications of Goods (Registration

and Protection) Rules 2002, will be registered after application is examined and processed as per the Council Regulation with its implementing rules. ]

*[EU: Article 13.3*

***Addition of new geographical indications***

- 1 *The Parties agree on the possibility to add new geographical indications to be protected in Annex III and IV in accordance with the procedure set out in Article 13.12 (3) after having completed the objection procedure and after having examined the geographical indications as referred to in Article 13.2 (3) and 13.2 (4) to the satisfaction of both Parties.*
- 2 *A Party shall not be required to protect as a geographical indication a name that conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.]*

*Article 13.4*

***Scope of protection of geographical indications***

*[EU:1. The geographical indications [EU: listed in Annex III and IV, as well as those added pursuant to Article 13.3], shall be protected against:*

- (a) any direct or indirect commercial use of a protected name:*
  - for comparable products not compliant with the product specification of the protected name, or*
  - in so far as such use exploits the reputation of a geographical indication;*
- (b) any misuse, imitation or 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', 'flavour', 'like' or similar;*

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

(d) any other practice liable to mislead the consumer as to the true origin of the product.]

[INDIA: Each party shall provide the legal means for interested parties to prevent the misuse, imitation or evocation of a geographical indication, even if the true origin of the product is indicated or if the protected geographical indication is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or the like.]

[EU: 2. Protected geographical indications shall not become generic in the territories of the Parties.]

3. If geographical indications are [EU: wholly or partially] homonymous, protection shall be granted to each indication provided that it has been used in good faith [EU: and with due regard for local and traditional usage and the actual risk of confusion. Without prejudice to Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),] The 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.

[EU: 4. Where a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of the third country, and the name is homonymous with a geographical indication of the other party the latter shall be informed and be given the opportunity to comment before the name becomes protected.

5. Nothing in this Article shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in its

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

#### Article 13.5

##### **Right of use of geographical indications**

[INDIA: Parties shall ensure that the procedure for applying and securing registration of geographical indications is not unnecessarily complicated or costly.]

[EU: 1. A name protected under this Agreement may be used by any operator marketing agriculture products foodstuffs, wines, aromatised wines or spirit drinks conforming to the corresponding specification.

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

#### [EU: Article 13.6

##### **Protection of transcription of geographical indications**

1. Geographical indications protected under the provisions of this Article in alphabets of India and other non-Latin alphabets officially used in EU Member States shall be protected together with their transcription in Latin characters. This transcription may also be used for labelling purposes for the products concerned.
2. Similarly, geographical indications protected under the provisions of this Article in a Latin alphabet, shall be protected together with their transcription in Indian alphabets and other non-Latin alphabets officially used in EU Member States. This transcription may also be used for labelling purposes for the products concerned.]

#### Article 13.7

##### **Relationship with trademarks**

[EU: 1 The Parties shall refuse to register or shall invalidate a trademark that corresponds to any of the situations referred to in Article 13.4(1) in relation to a protected geographical indication for like products, provided an application to register the trademark is submitted after the date of application for protection of the geographical indication in the territory concerned.]



- [EU: 2. For geographical indications referred to in Articles 13.2 the date of application for protection shall be the date of entry into force of this Article.
3. For geographical indications referred to in Article 13.3, the date of application for protection shall be the date of the transmission of a request to the other Party to protect a geographic indication.]
4. The Parties shall have no obligation to protect a geographical indication [EU pursuant to Article 13.3] where, in the light of a reputed or well-known trademark, protection is liable to mislead consumers as to the true identity or origin of the product.
5. Without prejudice [EU: to paragraph 4][INDIA: paragraph 3 of Article 13.4 (homonyms)], the Parties shall protect geographical indications also where a prior trademark exists. [EU: A prior trademark shall mean a trademark the use of which corresponds to one of the situations referred to in Article 13.4(1), which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement.]

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. [INDIA: The use of the protected geographical indication shall be permitted alongside the relevant trademarks.]

#### Article 13.8

#### Enforcement of protection

[INDIA:]

In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

- (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
- (b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).

[EU Article 13.10

#### General rules

1. *Import, export and commercialisation of products referred to in Article 13.2 shall be conducted in compliance with the laws and regulations applying in the territory of the Party in which the products are placed on the market.*
2. *Any matter arising from technical specifications of registered products shall be dealt with in the Committee established in Article 13.12.*
3. *Geographical indications protected under this Article may only be cancelled by the Party in which the product originates.*
4. *A product specification referred to in this Article shall be that approved, including any amendments also approved, by the authorities of the Party in the territory of which the product originates.]*

*[EU: Article 13.11*

***Co-operation and transparency***

1. *The Parties shall, either directly or through the Joint Committee established pursuant to Article 13.13, maintain contact on all matters relating to the implementation and the functioning of this Article. In particular, a Party may request from the other Party information relating to product specifications and their modification, and contact points for control provisions.*
2. *Each Party may make publicly available the specifications or a summary thereof and contact points for control provisions corresponding to geographical indications of the other Party protected pursuant to this Article.]*

*Article 13.12*

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

***Joint Committee***

1. Both Parties agree to set up a Joint Committee consisting of representatives of the European Union and the Republic of India with the purpose *[EU: of monitoring the development of the Article and]* of intensifying their co-operation and dialogue on geographical indications.
2. The Joint Committee may make recommendations and adopts its decisions by consensus.*[EU: It shall determine its own rules of procedure.]* It shall meet at the request of either of the Parties,

alternatively in the European Union 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.

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

- (a) amending this Article, as regards the references to the law applicable in the Parties,
- (b) modifying Annex III as regard to geographical indications,
- (c) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications,
- (d) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Article.]

#### Article 13.13

#### *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 [INDIA: may][EU: 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 14

#### **Genetic resources and Associated Traditional Knowledge**

*[EU Note: For the purpose of this article, the EU side considers that further clarification is needed on the concept of "associated traditional knowledge"]*

1 The parties reaffirm their sovereign rights over natural resources and recognise their rights and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources, and to the fair

and equitable sharing of benefits arising out of the utilisation of these genetic resources, as well as regards to associated traditional knowledge.

2 [INDIA: Recognising the importance and the value of their biological diversity and of the associated traditional knowledge, innovations and practices of indigenous and local communities, the parties shall take measures to ensure that access to the genetic resources of the other Party is subject to the prior informed consent of the Party providing the genetic resource, in accordance with the principles and provisions contained in national and internal law.]

3 [INDIA: Each Party shall take policy, legal and administrative measures for the fulfilment of terms and conditions for access to genetic resources and associated traditional knowledge by the Parties.]

4. The Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of [EU: sharing in a] fair and equitable [EU: way] the benefits arising from the [EU: commercial and other utilization] of genetic resources [EU: and] [associated traditional knowledge] with the Party [EU: providing such resources]. Such sharing shall be [EU: upon] mutually agreed terms.

5 [INDIA: The Parties shall require by way of legislation that patent applications contain a mandatory declaration of the origin or source of the genetic resource and traditional knowledge used by the inventor or the patent applicant. The Parties will also require evidence of prior informed consent for access, and fair and equitable sharing of benefits arising from the commercial or other use of such resources and for associated traditional knowledge, with consequences of non-disclosure or wrongful disclosure to be included within the national patent regime.]

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

6 [INDIA: The Parties shall collaborate in cases regarding non-compliance with applicable legal provisions on access to genetic resources and traditional knowledge, innovations and practices.]

## Article 15

### Traditional Knowledge

*[EU Note: For the purpose of this article, the EU side considers that further clarification is needed on the concept of traditional knowledge"]*

1. [INDIA: Each party shall ensure that Traditional Knowledge which is in public domain is not misappropriated at the patent offices of the parties.]
2. EU party shall [EU: endeavour to] ensure that access to Traditional Knowledge Digital Library prepared by India on Indian systems of Medicine is utilised to screen patent applications for prior art.
3. [INDIA: To prevent bio piracy each Party shall ensure that the patent offices provide the facility of filing third party observations before grant of patent at no cost and without time limit.]
4. [TKDL Access Agreement has been signed with the European Patent Office (EPO). It has enabled screening of patent applications for prior art in the Indian systems of medicine. [INDIA: EU shall create mechanism to review, outside the opposition system, the cases where wrong patents have been granted concerning Indian system of medicine due to absence of prior art.]

## Article 16

### Designs

#### *Article 16.1 - International Agreements*

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

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

#### *Article 16.2 - Definition*

*[EU: 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.]*

[INDIA: For the purpose of this Agreement "design" means [INDIA: 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 an industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished 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, property mark or any artistic work, as defined in the respective Indian national legislations.

For this purpose “article” means any article of manufacture and any substance, artificial, or partly artificial and partly natural, and includes any part of an article capable of being made and sold separately.]

### *Article 16.3 - Requirements for Protection*

1. [INDIA: The European Union and the Republic of India shall provide for the protection of designs that are new or original.]

*[EU: The European Union and the Republic of India shall provide for the protection of independently created designs that are new and that are original or have individual character].*

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

(a) *[EU: 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) *[INDIA: 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.*

3. Designs shall be deemed to be identical if [INDIA: their features differ only in immaterial details they are not significantly distinguishable from known designs or combination of known designs].

*[EU: 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 paragraph 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 [INDIA: are as a consequence of breach of good faith to any other person to use, publish, exhibit or disclose such design could not reasonably have become known ] in the normal course of business to the circles specialised in the sector concerned, [INDIA: 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.

[INDIA: The exhibition of a design at an industrial or other exhibition, duly notified by the national government, or the publication of description of the design, during or after the period of holding the exhibition, or the exhibition of the design by any person elsewhere without the privity or the consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof provided the exhibitor exhibiting the design or article or publishing the description of the design, gives to the registering authority previous notice and the application for the registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.]

*[EU: 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.]*

5. 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 [INDIA: a third any other ] person under explicit or implicit conditions of confidentiality.

6. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Article. *[EU: 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 16.4 - 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.

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

[EU: 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.]

#### Article 16.5 - 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, [INDIA: for the purpose of sale of the article/product or any, fraudulent or obvious imitation thereof] offering, putting on the market, importing, exporting, or using a product in which the design is incorporated or to which it is applied, or [INDIA: published or exposed or cause to be published or exposed for sale of that article. to publish or expose for sale of the article/product][EU: stocking such a product for those purposes.]

#### Article 16.6 - Term of Protection

The maximum duration of protection available in the European Union and in the Republic of India following registration shall amount to 15 years. The right holder may have the initial term of protection and further extension as per the legislation/regulation of the party concerned. *EU: one or more periods of five years each, up to at least a total term of 15 years from the date of filing]*

[EU: The duration of protection available in the European Union 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 16.7 - 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 16.2;
- b) \_\_\_ if it does not fulfil the requirements of Article 16.3 and Article 16.4
- 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) [EU: if a distinctive sign is used in a subsequent design, and the law of the Party concerned governing that sign confers on the right holder of the sign the right to prohibit such use;]
- f) if the design constitutes an unauthorised use of a work protected under the copyright law of the signatory concerned;
- g) if the design constitutes an improper use of any of items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property or of badges, emblems and escutcheons other than those covered by the said Article 6ter and which are of particular public interest in a Party.

[EU: 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 16.8 - 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 17

#### Patents

##### Article 17.1 - International Agreements

The Parties shall comply with:

- a) Articles 1 through 52 of the Patent Co-operation Treaty (Washington, 1970);
- b) 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).

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

#### *Article 17.2 – 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 and protect public health.

#### *[EU: Article 17.3 – 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]

[EU Note: the rationale of this provision is to ensure compensation in case of delays in market authorisation and this needs to be further explored with the Indian authorities. ]

#### [INDIA: Article 18

#### *Protection of Data Submitted to Obtain a Marketing Authorisation*

Each party in its laws and regulations provide for protection of undisclosed information in accordance with and subject to flexibilities of the TRIPS Agreement.]

[EU: Article 18

**Protection of Data Submitted to Obtain a Marketing Authorisation for pharmaceutical products**

1. *The Parties shall guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a pharmaceutical product on the market.*
2. *For that purpose, the Parties shall ensure in their respective legislation that any information submitted to obtain an authorisation to put a pharmaceutical product on the market will remain undisclosed to third parties and benefit from a period of at least [...] years of protection against unfair commercial use starting from the date of grant of marketing approval in either of the Parties.*
  - (a) *during a period of [...] years, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, will without the explicit consent of the person or entity who submitted this data, rely directly or indirectly on such data in support of an application for the authorisation to put a pharmaceutical product on the market;*
  - (b) *during a period of [...] years, a marketing authorisation granted for any subsequent application will not permit placing a pharmaceutical product on the market, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant. Products registered without submission of such data would be removed from the market until the requirements were met.*
3. *In addition, the [...] year period referred shall be extended to a maximum of [...] years if, during the first [...] years after obtaining the authorisation in either of the Parties, the holder of the basic authorisation obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.*
4. *If a Party relies on "patent linkage" mechanisms whereby the granting of marketing authorizations (or notices of compliance or similar concepts) for generic medicines is linked to the existence of patent protection, it shall ensure that the patent holders and the manufacturers of generic medicines are treated in a fair and equitable way, including regarding their respective rights of appeal.]*

[EU: Article 19

vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. The prospective applicant is only required to share in the costs of information he is required to submit to meet the authorisation requirements.

9. Where the new applicant and the holder or holders of the relevant authorisations of plant protection products cannot reach agreement on the sharing of test and study reports involving vertebrate animals, the new applicant shall inform the Party.

10. The failure to reach agreement shall not prevent the Party from using the test and study reports involving vertebrate animals for the purpose of the application of the new applicant.

11. The holder or holders of the relevant authorisation shall have a claim on the prospective applicant for a fair share of the costs incurred by him. The Party may direct the parties involved to resolve the matter by formal and binding arbitration administered under national law.]

Article [INDIA: 19] [EU: 20]

### **Plant Variety**

The parties shall cooperate to promote and reinforce the protection of plant varieties subject to their applicable laws and based on any international agreement to which [EU: each party respectively or] both parties are signatories!

### *Sub-Section 3*

### **Enforcement of Intellectual Property Rights**

[EU: Article 21]

### **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 rights<sup>2</sup>. Those measures, procedures and remedies shall be

<sup>2</sup> 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; [ ]; rights of the creator of the topographies of a semi conductor product; trademark rights; design rights; patent rights, including rights derived from supplementary

*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.]*

[INDIA: 1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures 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.

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

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.]

## Article 22

### Entitled Applicants

[EU: 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) professionals( INDIA: who 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 [INDIA: applicable law applicable in the territory of each party.]

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 [INDIA: applicable law applicable in the territory of each party.]

## Article 23

### Evidence

[EU: 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.]

[INDIA: 1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information. ]

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence]

#### Article 24

### Measures for Preserving Evidence

*[EU: 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.]*

*[INDIA: The judicial authorities shall have the authority to order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement.]*

#### Article 25

### Right of Information

*[EU: 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.]*

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

## Article 26

### Provisional and Precautionary Measures



[EU: 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.]

[INDIA: 1. The judicial authorities shall have the authority to order prompt and effective provisional measures to prevent an infringement of any intellectual property right from occurring) and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, 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.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place

upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section. ]

#### Article 27

#### Corrective Measures

*[EU: 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.]*

*[INDIA: In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be*

infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.]

## Article 28

### Injunctions

*[EU: 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.]*

[INDIA: 1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.]

## Article 29

### 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 27 'corrective measures' and/or Article 28 '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 27 "corrective measures" and/or Article 28 "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 30

### Damages

*[EU: 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.]*

[INDIA: 1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order

recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.]

#### Article 31

##### Legal Costs

[EU: The [INDIA: judicial authorities of the] Parties shall [INDIA: decide ~~ensure~~ levy of such legal costs as deemed fit ~~that reasonable and proportionate~~ legal costs and other expenses incurred by the successful party shall as a general rule that could] be borne by the unsuccessful party, unless equity does not allow this.]

#### Article 32

##### Publication of Judicial Decisions

[EU: The Parties [INDIA: may endeavour to ~~shall~~] ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial [INDIA: authorities pronouncement are available in the public domain 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 33

##### Presumption of Ownership

[EU: 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 34

##### Criminal Sanctions

## Article 35

### Liability of Intermediary Service Providers

#### [EU: Article 35.1 – 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 35.2 - 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 35.3 – Liability of Intermediary service providers: "Caching"

1. *Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient*

of the service, Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

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

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

#### Article 35.4 - 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 35.5 - 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 36

##### Border Measures

[EU: 1. The Parties shall, unless otherwise provided for in this section, adopt procedures<sup>3</sup> to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, entry or exit of the customs territory, placement under a suspensive procedure or placement under a free zone or a free warehouse of goods infringing an intellectual property right<sup>4</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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



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

*[EU Note: EU proposes to come back on the issue of generic medicines in transit in light of the current discussions.]*

[INDIA: 1. The Parties shall, unless otherwise provided for, adopt procedures to enable a right holder, who has valid reason for suspecting that the importation of goods infringing an intellectual property right, namely trade mark, copyright, patent, design or geographical indication may take place, to lodge an application in writing with competent authorities, for the suspension by customs authorities of the clearance of such goods.

2. The provisions relating to the procedure to be followed for enforcement of Intellectual Property Rights at the border with respect to imported goods suspected to be infringing Intellectual Property rights shall be governed by the legal provisions in force in the Party concerned.

3. Both parties shall ensure that goods in transit through their respective territories are not subject to any enforcement procedures for infringing IPRs.]

#### Article 37

#### *Codes of Conduct*

1. *(EU) 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 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 38

#### Co-operation

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

2. [INDIA: The Parties agree to cooperate in the areas of capacity building, human resource development and awareness generation in the field of intellectual property rights.]

3. Subject to the provisions of Article [X, horizontal art. on assistance/co-operation issues] of this Agreement, areas of co-operation include, , 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) capacity-building, exchange and training of personnel;
- d) promotion and dissemination of information on intellectual property rights in, *inter alia*, business circles and civil society; public awareness of consumers and right holders;
- e) enhancement of institutional co-operation, including between intellectual property offices.]

[end of document]

**Part A**

*Legislation of the parties*

*[Legislation of the third country concerned]*

*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 Union,*

*Chapter III of Title III of Council Regulation (EC) No 479/2008 on the common organisation of the market in wine*

*Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008*

**Part B**

*Elements for registration, control and protection of geographical indications as referred to in Article 13.2(1) and 13.2(2)*

- 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 appropriate administrative action by the public authorities;*
- 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;
- 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 the product labelled with the protected name provided he complies with the product specifications;

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.*

## ANNEX II

### *Criteria to be included in the objection procedure [as referred to in Article [X].2(3) and (4)]*

- a. *List of name(s) with the corresponding transcription into Latin or [script of the third country concerned] characters;*
- b. *information about the product class;*
- c. *Invitation to any (Member State – in the European Union case) or third country or any natural or legal persons having a legitimate interest, established or resident ( in a Member State in the European Union case)/(in [the third country concerned]) or in a third country to submit objections to such protection by lodging a duly substantiated statement;*
- d. *Statements of objection must reach (the European Commission /the [third country concerned] Government) within 2 months from the date of this publication;*
- e. *Statements of objection shall be admissible only if they are received within the time-limit set out above and if they show that the protection of the name proposed would:*
  - *conflict with the name of a plant variety, including a wine grape variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product;*
  - *be a homonymous name which misleads the consumer into believing that products come from another territory;*
  - *in the light of a trademark's reputation and renown and the length of time it has been used, be liable to mislead the consumer as to the true identity of the product;*
  - *jeopardise the existence of an entirely or partly identical name or of a trademark or the existence of products which have been legally on the market for at least five years preceding the date of the publication of this notice;*

o or if they can give details which indicate that the name, for which protection and registration is considered, is generic.

f. the criteria referred to above shall be evaluated in relation to the territory of (the European Union, which in the case of intellectual property rights refers only to the territory or territories where the said rights are protected) / (of [the third country concerned]).

### ANNEX III

#### PART A

Geographical indications of European Union products as referred to in Article [X].2(3)

[...]

#### PART B

Geographical indications of [the third country concerned] products as referred to in Article [X].2(4)

[...]

### Annex IV

Geographical indications for products as referred to in Article 13 .2(5)

#### PART A

Wines of the European Union to be protected in [Third Country concerned]

[...]

**Wines of *[Third Country concerned]* to be protected in the European Union**

[...]

**PART B**

**Spirit drinks of the European Union to be protected in *[Third Country concerned]***

[...]

**Spirits drinks of *[Third Country concerned]* to be protected in the European Union**

[...]

**PART C**

**Aromatised wines of the European Union to be protected in *[Third Country concerned]***

[...]

**Aromatised wines of *[Third Country concerned]* to be protected in the European Union**

[...]