

## **AIPPI Special Committee Q184**

**Bilateral, trilateral and other Free Trade Agreements worldwide**

**Annual report of Special Committee Q184 prepared for the  
AIPPI Paris Congress October 3-6, 2010**

### **Composition of Special Committee Q184**

Chairman; Peter Dirk Siemsen (Brazil)  
Co-Chairman: Bruce Morgan (Canada)  
Secretary: vacant  
Members: Alfredo Rangel (Mexico)  
Maria el Carmen Arana (Peru)

With regard to my Committee, only three members have sent the reports. One referring to Peru, one from Egypt and one from Sweden reporting the EU-Korea Free Trade Agreement.

### **PERU (from Maria del Carmen Arana)**

1) On July 14<sup>th</sup>, 2010, Peru and EFTA signed a Free Trade Agreement. Chapter 6 and Chapter 11 refer to Intellectual Property.

Chapter 6: Intellectual Property Protection

Article 6.1. "General". The liability for setting up observance and protection measures of rights against piracy and counterfeit is emphasized in the first paragraph.

The fact that parties are authorized to grant greater Intellectual Property protection than the established one is indicated in paragraph 2.

Equal treatment to both parties' nationals is indicated in paragraph 3.

The treat "of the most favored nation" indicated in the ADPIC is reiterated in paragraph 4.

The fact that measures are authorized to prevent abuse against IP rights, which reiterates Article 8 of the ADPIC, is mentioned in paragraph 5.

Article 6.2. "Basic principles". There are mutual acknowledgement about "technological innovation, transference and diffusion of technology on behalf on social welfare" as well as public health principles of the ADPIC and DOHA.

Of noting is the fact that the parties can adopt the necessary measures to protect health and nutrition when modifying its laws. These new laws must be done provided that they are compatible with Chapter 6 of IP.

### Article 6.3

Article 6.4. International Agreements. In paragraph 1, of noting is the reaffirmation of the IP rights comprised in the agreements to which Peru is part of, such as: Paris Covenant, Berna Agreement and Rome Agreement.

The second paragraph obliges the parties to ratify or access to multilateral agreements to which Peru is already part of, such as: Budapest (when signing it), UPOV (approved by Legislative Resolution N° 29557, officially published on July 13, 2010) and PCT, in force in Peru since June 6, 2009.

The third paragraph requests ratifying the two (2) Copyrights agreements (WPPT and WCT). The fact that the parties shall take as soon as possible the necessary actions to subject the adhesion to two (2) agreements at its competent national authorities' consideration: being one of them of the Hague Agreement on international registration of industrial designs and Madrid Protocol on mark registrations.

Article 6.5 Biodiversity measures. There is an acknowledgement on different biodiversity elements (genetic resources and traditional knowledge, among others) in this chapter. There is also regulation regarding access to genetic resources and traditional knowledge provided that that this agrees with the national legislation of each party.

Article 6.6. "Marks". This article has 4 paragraphs.

The first one repeats Article 16 of the ADPIC. The other ones relate to the use of the Nice Classification indicating that this does not determine similarity and difference among the marks. The last paragraph is an acknowledgement to the criteria on well-known marks of the WIPO.

Article 6.7 Geographical Indications. It has 5 paragraphs. Origin denominations are recognized.

Article 6.8. Copyrights and annexed, with 4 paragraphs.

Article 6.9 "Patents" with 5 paragraphs. Paragraph 1 reiterates Article 14 of Decision 486. Patentability exclusions are indicated in paragraph 2. Paragraph 3 deals with excluding patentability from diagnosis and treatment methods, plants and animals. However, it is indicated that a protection on plants through patents or a sui generis protection can be set up.

Paragraph 4 deals with the fact that the parties shall do their best in order to avoid unreasonable delays for obtaining patents as well as for approval applications of commercialization.

Article 6.10 "Designs". 1 paragraph.

Article 6.11 "Proof data". 5 paragraphs.

The first paragraph establishes the liability for protecting non-disclosed information or data. The second paragraph sets up the reasonable 5-year term for pharmaceutical products and the 10-year term for agricultural chemicals as from approval. However, the parties are allowed to set up short approval mechanisms of products based on bioequivalence and bioavailability studies.

Paragraph 3 indicates the fact that in order to avoid duplicity of proofs on agricultural products involving vertebrates, a mechanism to properly compensate the first applicant can be used.

Paragraph 4 reiterates the ADPIC's principles on public health protection.

Paragraph 5 relates to a priority date within the 6 months as from the first commercialization approval, wherein the Applicant shall file the approval application somewhere else. Protection term shall be counted on as from the first approval.

September 2010

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## CHAPTER 11

### INTELLECTUAL PROPERTY RIGHTS

#### **Article 144: General Provisions**

1. The Parties recognize the importance of intellectual property rights in promoting economic and social development, particularly in the globalization of technological innovation and trade, as well as the transfer and dissemination of technology to the mutual advantage of technology producers and users, and agree to encourage the development of social economic well-being, and trade.
2. The Parties recognize the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.
3. Each Party reaffirms its commitment established in existing international agreements in the field of intellectual property rights, to which both are Parties, including the TRIPS Agreement.
4. The Parties will prevent practices which constitute abuse of intellectual property rights by right holders or unreasonably restrain competence or adversely affect or limit technology transfer.
5. Each Party shall establish and maintain transparent intellectual property rights regimes and systems that provide certainty over the protection and enforcement of intellectual property rights.
6. The Parties recognize the principles established in the Declaration on the TRIPS Agreement on Public Health, adopted on November 14<sup>th</sup>, 2001, by the WTO at the Fourth WTO Ministerial Meeting held in Doha, Qatar, the Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, adopted on August 30<sup>th</sup>, 2003.

#### **Article 145: Genetic Resources, Traditional Knowledge and Folklore**

1. The Parties recognize the contribution made by the genetic resources, traditional knowledge and folklore to the scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles and provisions established in the Convention on Biological Diversity adopted on June 5<sup>th</sup>, 1992, and encourage the effort to establish a mutually supportive relationship between the TRIPS Agreement and

the Convention on Biological Diversity, regarding genetic resources and the protection of traditional knowledge and folklore.

3. Subject to each Party's international obligations and national legislation, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

4. Subject to future developments of national legislation, the Parties agree to further discuss the disclosure of origin or source of genetic resources and/or prior informed consent obligations in patent applications.

#### **Article 146: Geographical Indications**

1. The terms listed in the Peruvian List of Annex 10 (Geographical Indications) are geographical indications in Peru, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to China's domestic laws and regulations, in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territory of China.

2. The terms listed in the Chinese List of Annex 10 (Geographical Indications) are geographical indications in China, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to Peru's domestic laws and regulations, in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territory of Peru.

3. Subject to consultations and by mutual consent, the Parties may extend the accorded protection for geographical indications listed in Annex 10 (Geographical Indications) to other geographical indications of the Parties.

#### **Article 147: Special Requirements Related to Border Measures**

1. Each Party shall provide that any right holder initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the relevant laws of the Party, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods reasonably recognizable to the customs authorities. The sufficient information required shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide the competent authorities with the powers to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect

the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

3. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the right to inform the right holder, at the right holder's request, of the names and addresses of the consignor, the importer, and the consignee, as well as the quantity of the goods in question.

4. Each Party shall provide that the competent authorities are permitted to initiate border measures *ex officio*, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported, exported or in transit are counterfeit or pirated.

#### **Article 148: Cooperation and Capacity Building**

1. The Parties shall continue cooperation under the framework established in the previous *Agreement of Cooperation of Intellectual Property between the Government of the Republic of Peru and the Government of the People's Republic of China*, signed on June 2<sup>nd</sup>, 2005, with a common view to increasing capacity building and to fostering the development of intellectual property policies and eliminating trade in goods infringing intellectual property rights, subject to their respective laws, rules, regulations, directives and policies.

2. Without prejudice to the obligations of the Agreement mentioned in paragraph 1 of this Article, the Parties will cooperate, on mutually agreed terms and subject to the availability of appropriated funds, on educational and dissemination projects on the use of intellectual property rights as an innovation tool.

3. The Parties will cooperate, on mutually agreed terms, to exchange information regarding:

- (a) conservation and sustainable use of biological biodiversity;
- (b) actions to prevent the illegal access to genetic resources, traditional knowledge, innovation and practices;
- (c) internal procedures regarding sharing equitable benefits arising from the use of genetic resources, traditional knowledge, innovations and practices; and
- (d) other intellectual property rights issues.

4. Each Party shall encourage and facilitate the development of contacts and cooperation in the field of intellectual property rights between their respective government agencies, educational institutions and other organizations.

There is no any provision on patents or proof data.

#### 2) China – Peru Free Trade Agreement

Signed on April 28, 2009 and ratified on December 6, 2009, in force since 01/03/2010.

#### 3) Japan – Peru Free Trade Agreement

Japan and Peru had five (5) rounds and it seems like if there would not be an agreement on Intellectual Property, specifically.

#### 4) Korea – Peru Free Trade Agreement

Preliminary bilateral negotiations between Korea and Peru have been concluded on August 30<sup>th</sup>, 2010. As the text will go through a legal revision, it is maintained confidential.

#### 5) EU – Peru Free Trade Agreement

Peru and the EU had negotiations about the Free Trade Agreement from February 22 to 24, 2010 in Brussels. The chapter on Intellectual Property was concluded, however the text is still being revised and, therefore, maintains confidential.

### **BRAZIL**

After a long pause, the EU and Brazil agreed to restart negotiations for a Free Trade Agreement next December. No negotiations were reopened on the Free Trade Agreement with the United State and it can be said that the Free Trade Agreement of the Americas is a dead issue.

### **EGYPT (from Samir Hamza)**

Following up the excellent previous report, the Egyptian group now reports the development which occurred since then.

I refer to the Egyptian Group report on FTAs submitted September 2009 and wish to inform you that the latest information concerning FTA was that Egypt signed an FTA with the European Free Trade Association (EFTA) (consisting of Republic of Iceland, Norway, Switzerland and Liechtenstein). The FTA follows the path of the "Partnership Agreement" with the European Union. Indeed it adopts the same rules of origin that are referred to in the Agreement with the European Union. Further, it reduces the custom duties on Industrial commodities using the list of commodities referred to in the

European Union Agreement with Egypt. It also has a specific section on Intellectual Property that specifically refers to TRIPS in accordance with Annex (5) of the Agreement. Annex (5) of the Agreement provides that the parties shall adhere to and comply with the obligations outlined in the following Agreements:

- 1- WTO Agreements including TRIPS.
- 2- Paris Convention dated 1883 regarding Industrial Property (Stockholm Act. 1967).
- 3- Berne Convention of 1886 regarding Artistic and Literature work ( Paris Act. 1971).

Further, by the end of the fourth year the Agreement comes into effect, the parties shall accede to the following:-

- (a) The Madrid Protocol regarding the International registration of Trade Marks.
- (b) Patent co-operation Treaty (Washington Act. 1979 updated 1984).
- (c) The Nice Agreement regarding the International classifications of goods and services regarding the registration of Trade Marks (Geneva Act. 1977 updated 1979)
- (d) The Budapest Agreement regarding recognition of the deposit of micro organisms for the purpose of Patent procedures.
- (e) The UPOV Agreement regarding new varieties of plants.
- (f) The Rome Agreement of 1961 regarding the protection of performers and broadcasting organizations.

In general to have all their local laws comply with the TRIPS Agreement including undisclosed information.

### **EU-Korea Free Trade Agreement (from Marianne Levin – Sweden)**

The Free Trade Agreement (FTA) between the EU and the Republic of Korea is the first of the new generation of FTAs launched in 2007. It has been initialled in Brussels on 15th October 2009.

The agreement consists of 15 Chapters, 3 protocols, several annexes and appendixes, a number of understandings and a joint declaration.

This text is provided exclusively for information purposes. The text provided here is the text after the completion of negotiations and is not binding as a matter of international law. The authentic text will be published in the Official Journal of the European Union upon the completion of the necessary ratification procedures.

The chapter 10 refers to Intellectual Property and it comprises the following articles:

#### **Chapter 10** Intellectual Property

##### **SECTION A**

##### **GENERAL PROVISIONS**

ARTICLE 10.1: OBJECTIVES

ARTICLE 10.2: NATURE AND SCOPE OF OBLIGATIONS

ARTICLE 10.3: TRANSFER OF TECHNOLOGY

ARTICLE 10.4: EXHAUSTION

##### **SECTION B**

##### **STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS**



## **SUB-SECTION A**

### **COPYRIGHT AND RELATED RIGHTS**

ARTICLE 10.5: PROTECTION GRANTED

ARTICLE 10.6: DURATION OF AUTHORS' RIGHTS

ARTICLE 10.7: BROADCASTING ORGANISATIONS

ARTICLE 10.8: CO-OPERATION ON COLLECTIVE MANAGEMENT OF RIGHTS

ARTICLE 10.9: BROADCASTING AND COMMUNICATION TO THE PUBLIC

ARTICLE 10.10: ARTISTS' RESALE RIGHT IN WORKS OF ART

ARTICLE 10.11: LIMITATIONS AND EXCEPTIONS

ARTICLE 10.12: PROTECTION OF TECHNOLOGICAL MEASURES

ARTICLE 10.13: PROTECTION OF RIGHTS MANAGEMENT INFORMATION

ARTICLE 10.14: TRANSITIONAL PROVISION

## **SUB-SECTION B**

### **TRADEMARKS**

ARTICLE 10.15: REGISTRATION PROCEDURE

ARTICLE 10.16: INTERNATIONAL AGREEMENTS

ARTICLE 10.17: EXCEPTIONS TO THE RIGHTS CONFERRED BY A TRADEMARK

## **SUB-SECTION C**

### **GEOGRAPHICAL INDICATIONS**

ARTICLE 10.18: RECOGNITION OF GEOGRAPHICAL INDICATIONS FOR

AGRICULTURAL PRODUCTS AND FOODSTUFFS AND WINES

ARTICLE 10.19: RECOGNITION OF SPECIFIC GEOGRAPHICAL INDICATIONS FOR WINES,

AROMATISED WINES<sup>5</sup> AND SPIRITS

ARTICLE 10.20: RIGHT OF USE

ARTICLE 10.21: SCOPE OF PROTECTION

ARTICLE 10.22: ENFORCEMENT OF PROTECTION

ARTICLE 10.23: RELATIONSHIP WITH TRADEMARKS

ARTICLE 10.24: ADDITION OF GEOGRAPHICAL INDICATIONS FOR PROTECTION<sup>8</sup>

ARTICLE 10.25: WORKING GROUP ON GEOGRAPHICAL INDICATIONS

ARTICLE 10.26: INDIVIDUAL APPLICATIONS FOR PROTECTION OF GEOGRAPHICAL INDICATIONS

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### **DESIGNS**

ARTICLE 10.27: PROTECTION OF REGISTERED DESIGNS

ARTICLE 10.28: RIGHTS CONFERRED BY REGISTRATION

ARTICLE 10.29: PROTECTION CONFERRED TO UNREGISTERED APPEARANCE

ARTICLE 10.30: TERM OF PROTECTION

ARTICLE 10.31: EXCEPTIONS

ARTICLE 10.32: RELATIONSHIP WITH COPYRIGHT

## **SUB-SECTION E**

### **PATENTS**

ARTICLE 10.33: INTERNATIONAL AGREEMENT

ARTICLE 10.34: PATENTS AND PUBLIC HEALTH

ARTICLE 10.35: EXTENSION OF THE DURATION OF THE RIGHTS CONFERRED BY PATENT

PROTECTION

ARTICLE 10.36: PROTECTION OF DATA SUBMITTED TO OBTAIN A MARKETING AUTHORISATION

FOR PHARMACEUTICAL PRODUCTS

ARTICLE 10.37: PROTECTION OF DATA SUBMITTED TO OBTAIN MARKETING  
AUTHORISATION FOR PLANT PROTECTION PRODUCTS  
ARTICLE 10.38: IMPLEMENTATION

**SUB-SECTION F  
OTHER PROVISIONS**

ARTICLE 10.39: PLANT VARIETIES  
ARTICLE 10.40: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND  
FOLKLORE

**SECTION C  
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

ARTICLE 10.41: GENERAL OBLIGATIONS  
ARTICLE 10.42: ENTITLED APPLICANTS

**SUB-SECTION A  
CIVIL MEASURES, PROCEDURES AND REMEDIES**

ARTICLE 10.43: EVIDENCE  
ARTICLE 10.44: PROVISIONAL MEASURES FOR PRESERVING EVIDENCE  
ARTICLE 10.45: RIGHT OF INFORMATION  
ARTICLE 10.46: PROVISIONAL AND PRECAUTIONARY MEASURES  
ARTICLE 10.47: CORRECTIVE MEASURES  
ARTICLE 10.48: INJUNCTIONS  
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ARTICLE 10.50: DAMAGES  
ARTICLE 10.51: LEGAL COSTS  
ARTICLE 10.52: PUBLICATION OF JUDICIAL DECISIONS  
ARTICLE 10.53: PRESUMPTION OF AUTHORSHIP OR OWNERSHIP

**SUB-SECTION B  
CRIMINAL ENFORCEMENT**

ARTICLE 10.54: SCOPE OF CRIMINAL ENFORCEMENT  
ARTICLE 10.55: GEOGRAPHICAL INDICATIONS AND DESIGNS COUNTERFEITING  
ARTICLE 10.56: LIABILITY OF LEGAL PERSONS  
ARTICLE 10.57: AIDING AND ABETTING  
ARTICLE 10.58: SEIZURE  
ARTICLE 10.59: PENALTIES  
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ARTICLE 10.61: RIGHTS OF THIRD PARTIES

**SUB-SECTION C  
LIABILITY OF ONLINE SERVICE PROVIDERS**

ARTICLE 10.62: LIABILITY OF ONLINE SERVICE PROVIDERS<sup>23</sup>  
ARTICLE 10.63: LIABILITY OF ONLINE SERVICE PROVIDERS: "MERE CONDUIT"  
ARTICLE 10.64: LIABILITY OF ONLINE SERVICE PROVIDERS: "CACHING"  
ARTICLE 10.65: LIABILITY OF ONLINE SERVICE PROVIDERS: "HOSTING"  
ARTICLE 10.66: NO GENERAL OBLIGATION TO MONITOR



**SUB-SECTION D**

## **OTHER PROVISIONS**

ARTICLE 10.67: BORDER MEASURES

ARTICLE 10.68: CODES OF CONDUCT

ARTICLE 10.69: CO-OPERATION

- [Annex 10-A](#)  Geographical indications for agricultural products and foodstuffs
- [Annex 10-B](#)  Geographical indications for wines, aromated wines and spirits