

WIPO



WIPO/GRTKF/IC/1/11

ORIGINAL: English

DATE: May 1, 2001

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

E

INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

First Session

Geneva, April 30 to May 3, 2001

DECISION 345 – COMMON PROVISIONS ON THE PROTECTION OF THE RIGHTS OF
BREEDERS OF NEW PLANT VARIETIES

DECISION 351 – COMMON PROVISIONS ON COPYRIGHT AND NEIGHBORING
RIGHTS

DECISION 391 – COMMON REGIME ON ACCESS TO GENETIC RESOURCES

DECISION 486 – COMMON INTELLECTUAL PROPERTY REGIME

Documents submitted by the Member States of the Andean Community

1. On May 1, 2001, the Member States of the Andean Community submitted four documents to the first session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
2. The documents are entitled “Decision 345 – Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties”, “Decision 351 – Common Provisions on Copyright and Neighboring Rights”, “Decision 391 – Common Regime on Access to Genetic Resources”, and “Decision 486 – Common Intellectual Property Regime.” The documents

are reproduced in the form received and published as Annexes I to IV respectively to this document.

3. The documents were submitted under cover of a note reading as follows:

“The Andean Community Members present their full regional legislation on Intellectual Property Rights and Access to Genetic Resources. A Decision on a Common Regime on Protection of Traditional Knowledge is being prepared. This Regime will be presented to the Committee once adopted.”

4. The note also states that “Andean Decisions are supranational regulations with direct applicability and effect in the territories of the member states.”

5. The Intergovernmental Committee is invited to take note of this document and the Annexes to it.

[Annex I follows]

DECISION 345
COMMON PROVISIONS ON THE PROTECTION
OF THE RIGHTS OF BREEDERS OF NEW PLANT VARIETIES*
(OF OCTOBER 21, 1993)

CHAPTER I
SUBJECT MATTER AND SCOPE

Article 1.- The purpose of this Decision is:

- (a) to recognize and ensure the protection of the rights of breeders of new plant varieties by the grant of breeders' certificates;
- (b) to promote research activities in the Andean area;
- (c) to promote technology transfer activities within and outside the subregion.

Article 2.-The scope of this Decision shall encompass all botanical genera and species insofar as the growing, possession or use thereof are not prohibited for reasons of human, animal or plant health.

CHAPTER II
DEFINITIONS

Article 3.- For the purposes of this Decision, the following definitions are adopted:

Competent national authority: Body appointed by each Member Country to apply the provisions on plant variety protection.

Live sample: A sample of the variety supplied by the applicant for a breeder's certificate, which sample shall be used for the testing of novelty, distinctness, uniformity and stability.

Variety: Set of cultivated botanical individuals that are distinguished by specific morphological, physiological, cytological and chemical characteristics and can be perpetuated by reproduction, multiplication or propagation.

Essentially derived variety: A variety shall be deemed to be essentially derived from an initial variety when it originated therefrom or from a variety itself essentially derived from the initial variety and retains the expression of the essential characteristics that result from the genotype or combination of genotypes of the original variety, and which although distinguishable from the initial variety, nevertheless conforms to it in the expression of the essential characteristics that result from the

* Spanish Title: Decisión 345. Régimen común de protección a los derechos de los obtentores de variedades vegetales.

Source: *Gaceta oficial del Acuerdo de Cartagena* of October 29, 1993.

genotype or combination of genotypes of the initial variety, except with respect to differences resulting from the derivation process.

Material: Reproductive or vegetative multiplication material in any form; harvested material, including whole plants and parts of plants; any product made directly from harvested material.

CHAPTER III RECOGNITION OF BREEDERS' RIGHTS

Article 4.- The Member Countries shall grant breeders' certificates to persons who have created plant varieties, insofar as the varieties are new, uniform, distinct and stable, and if they have been given a denomination that constitutes their generic designation.

For the purposes of this Decision, "created" shall be understood to denote the production of a new variety by the application of scientific skills to the genetic improvement of plants.

Article 5.- Without prejudice to the provisions of Article 37, the Government of each Member Country shall appoint its competent national authority and shall establish the functions thereof, and shall also establish the national procedure for the implementation of this Decision.

Article 6.- There shall be established in each Member Country a National Register of Protected Plant Varieties, in which all varieties conforming to the conditions laid down in this Decision shall be registered. The Board shall be responsible for keeping a subregional register of protected plant varieties.

Article 7.- To be entered in the Register referred to in the foregoing Article, varieties shall fulfill the conditions of novelty, distinctness, uniformity and stability and in addition shall have an appropriate generic denomination.

Article 8.- A variety shall be deemed to be new if reproductive or multiplication material or harvested material thereof has not been lawfully sold or disposed of to others in another manner by or with the consent of the breeder or his successor in title for purposes of commercial exploitation of the variety.

Novelty shall be lost where:

- (a) exploitation has begun more than one year prior to the filing date of the application for the grant of a breeder's certificate or the date of any priority claimed, if sale or disposal to others has taken place within the territory of any Member Country;
- (b) exploitation has begun more than four years or, in the case of trees and grapevines, more than six years prior to the filing date of the application for the grant of a breeder's certificate or the date of any priority claimed, if the sale or disposal to others has taken place in a territory other than that of any Member Country.

Article 9.- Novelty shall not be lost through sale or disposal of the variety to others, *inter alia*, when those acts:

- (a) are the result of an abuse to the detriment of the breeder or his successor in title;

- (b) form part of an agreement to transfer the rights in the variety, provided that the variety has not been physically disposed of to a third party;
- (c) form part of an agreement under which a third party has, on behalf of the breeder, increased supplies of reproductive or multiplication material;
- (d) form part of an agreement under which a third party has carried out field or laboratory tests or small-scale processing tests with a view to the evaluation of the variety;
- (e) involve harvested material that has been obtained as a by-product or surplus product of the variety or from the activities mentioned in this Article under (c) and (d);
- (f) are performed in any unlawful manner.

Article 10.- A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the filing date of the application or the date of any priority claimed.

The filing in any country of an application for the grant of a breeder's certificate or for the entry of the variety in an official register of cultivars shall make the said variety a matter of common knowledge as from that date, insofar as the act concerned leads to the grant of the certificate or the entry of the variety, as the case may be.

Article 11.- A variety shall be deemed to be uniform if it is sufficiently uniform in its essential characteristics, due account being taken of the variations that may be expected from the manner of its reproduction, multiplication or propagation.

Article 12.- A variety shall be deemed to be stable if its essential characteristics remain unchanged from generation to generation and at the end of each particular cycle of reproduction, multiplication or propagation.

Article 13.- Each Member Country shall ensure that no rights in the designation registered as the denomination of the variety hamper the free use thereof, even after the breeder's certificate has expired.

The designation adopted may not be registered as a mark and shall be sufficiently distinctive in relation to other denominations registered previously.

Where one variety is the subject of applications for the grant of breeders' certificates in two or more Member Countries, the same denomination shall be used in all cases.

Article 14.- The owners of breeders' certificates may be natural persons or legal entities. The certificate shall belong to the breeder of the variety or the party to whom it has been lawfully transferred.

The breeder may claim his rights before the competent national authority if the certificate has been granted to a person not entitled thereto.

Article 15.-The State employer, whatever its form and nature, may transfer part of the profits from plant breeding to its breeder employees in order to stimulate research activity.

CHAPTER IV REGISTRATION

Article 16.-The application for the grant of a breeder's certificate for a new variety shall comply with the conditions set forth in Article 7 and shall be accompanied by a detailed description of the relevant breeding process. In addition, should the competent national authority consider this necessary, the application shall likewise be accompanied by a live sample of the variety or the document evidencing the deposit thereof with the competent national authority of another Member Country.

The Member Countries shall regulate the manner in which samples are to be deposited, including, among other matters, the necessity and desirability of effecting such a deposit, the duration thereof and the replacement or supply of samples.

Article 17.- The breeder shall enjoy provisional protection during the period between the filing of the application and the grant of the certificate.

No action for damages may be brought until the breeder's certificate has been granted, but such an action may cover damages caused by the defendant as from the publication of the application.

Article 18.-The owner of an application for the grant of a breeder's certificate filed in a country that accords reciprocal treatment to the Member Country in which registration of the variety is being sought shall enjoy a right of priority for a period of 12 months for the purpose of seeking protection for the same variety in any of the other Member Countries. This period shall be calculated from the filing date of the first application.

In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The competent national authority of the Member Country in which the subsequent application has been filed may require the applicant to supply, within a period of not less than three months from the date of the said filing, a copy of the documents which constitute the first application, which copy shall be certified true by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

Article 19.- The competent national authority of each Member Country shall issue a technical report on novelty, distinctness, uniformity and stability.

Article 20.- On the issue of a favorable technical report and after compliance with the prescribed procedure, the competent national authority shall grant the breeder's certificate.

The grant of the certificate shall be notified to the Board of the Cartagena Agreement, which in turn shall bring it to the notice of the other Member Countries for the purposes of the recognition thereof.

Article 21.- The term of the breeder's certificate shall be from 20 to 25 years in the case of vines, forest trees and fruit trees, including their rootstocks, and from 15 to 20 years for other species, calculated in both cases from the date of grant, as determined by the competent national authority.

CHAPTER V OBLIGATIONS AND RIGHTS OF THE BREEDER

Article 22.- The owner of a variety entered in the Register of Protected Plant Varieties shall be under the obligation to maintain it and reconstitute it as necessary throughout the term of the breeder's certificate.

Article 23.- A breeder's certificate shall give the owner thereof the right to bring administrative or judicial actions under his national legislation with a view to preventing or restraining any acts that constitute infringement or violation of his right, and securing the appropriate forms of compensation or indemnification.

Article 24.-The grant of a breeder's certificate shall confer on the owner thereof the right to prevent third parties from engaging without his consent in the following acts in respect of reproductive, propagating or multiplication material of the protected variety:

- (a) production, reproduction, multiplication or propagation;
- (b) preparation for the purposes of reproduction, multiplication or propagation;
- (c) offering for sale;
- (d) sale or any other act that entails placing reproductive, propagating or multiplication material on the market for commercial purposes;
- (e) exportation;
- (f) importation;
- (g) possession for any of the purposes mentioned in the foregoing subparagraphs;
- (h) commercial use of ornamental plants or parts of plants as multiplication material for the production of ornamental and fruit plants, or parts thereof or cut flowers;
- (i) the performance of the acts mentioned in the foregoing subparagraphs in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of reproductive or multiplication material of the protected variety, unless the owner has had reasonable opportunity to exercise his exclusive right in relation to the said reproductive or multiplication material.

The breeder's certificate shall likewise entitle the owner thereof to exercise the rights specified in the foregoing subparagraphs in respect of varieties that are not clearly distinguishable from the protected variety, within the meaning of Article 10 of this Decision, and in respect of varieties whose production calls for repeated use of the protected variety.

The competent national authority may confer on the owner the right to prevent third parties from engaging, without his consent, in the acts specified in the foregoing subparagraphs in respect of varieties essentially derived from the protected variety, except where the latter variety is itself an essentially derived variety.

Article 25.- The breeder's certificate shall not confer on the owner thereof the right to prevent third parties from using the protected variety where such use is made:

- (a) in a private circle, for non-commercial purposes;
- (b) for experimental purposes;
- (c) for the breeding and exploitation of a new variety, except in the case of a variety essentially derived from a protected variety. The said new variety may be registered in the name of the breeder thereof.

Article 26.- Anyone who stores and sows for his own use, or sells as a raw material or food, the product of his cultivation of the protected variety shall not be thereby infringing the breeder's right. This Article shall not apply to the commercial use of multiplication, reproductive or propagating material, including whole plants and parts of plants of fruit, ornamental and forest species.

Article 27.- Breeders' rights may not be invoked against the acts mentioned in Article 24 of this Decision where the material of the protected variety has been sold or otherwise marketed by the owner of the said right, or with his consent, except where those acts involve:

- (a) further reproduction, multiplication or propagation of the protected variety, subject to the limitation specified in Article 30 of this Decision;
- (b) exportation of the material of the protected variety, such as would permit reproduction thereof, to a country that does not grant protection to the varieties of the plant species to which the exported variety belongs, except where the said material is for human, animal or industrial consumption purposes.

Article 28.- Where necessary, the Member Countries may adopt measures for the regulation or control, on their territory, of the production or marketing, importation or exportation of reproductive or multiplication material of a variety, provided that such measures do not imply disregard for the breeders' rights recognized by this Decision, or hamper the exercise thereof.

CHAPTER VI LICENSING

Article 29.-The owner of a breeder's certificate may grant licenses for the exploitation of the variety.

Article 30.-With a view to ensuring adequate exploitation of the protected variety, in exceptional circumstances affecting national security or the public interest, national governments may declare the said variety freely available subject to equitable compensation of the breeder.

The competent national authority shall decide on the amount of compensation, after having heard the parties and taken expert advice, on the basis of the scale of exploitation of the variety so licensed.

Article 31.- During the period of validity of the declaration of free availability, the competent national authority shall allow exploitation of the variety by interested persons who offer sufficient technical guarantees and apply to it to that end.

Article 32.- The declaration of free availability shall remain in force for as long as the circumstances that brought it about continue to obtain and up to a maximum of two years, which period may be renewed once for the same amount of time, provided that the circumstances under which the declaration was made have not disappeared with the lapse of the first such period.

CHAPTER VII NULLITY AND CANCELLATION

Article 33.- The competent national authority shall, either ex officio or at the request of a party, declare the breeder's certificate null and void when it is established that:

- (a) the variety did not fulfill the requirements of novelty and distinctness when the certificate was granted;
- (b) the variety did not fulfill the conditions laid down in Articles 11 and 12 of this Decision when the certificate was granted;
- (c) the certificate has been granted to a person who has no right to it.

Article 34.- In order to keep the breeder's certificate in force, the appropriate fees shall be paid in accordance with the provisions laid down in the domestic legislation of the Member Countries.

The owner shall be allowed a period of grace of six months following the expiration of the prescribed period within which to effect payment of the fee due, together with the appropriate surcharge. The breeder's certificate shall remain fully valid throughout the period of grace.

Article 35.- The competent national authority shall declare the certificate canceled in the following cases:

- (a) where it is established that the protected variety has ceased to meet the conditions of uniformity and stability;
- (b) where the breeder does not provide the information, documents or material necessary for testing the maintenance or reconstitution of the variety;
- (c) where the breeder does not, after the denomination of the variety has been rejected, propose another suitable denomination within the prescribed period;
- (d) where payment of the fee has not taken place by the expiration of the period of grace.

Article 36.- Any nullity, lapse, cancellation, cessation or loss of breeders' rights shall be notified to the Board, by the competent national authority, within 24 hours of the making of the corresponding pronouncement, which shall in addition be duly published in the Member Country, whereupon the variety shall become public property.

CHAPTER VIII COMPLEMENTARY PROVISIONS

Article 37.- The Subregional Committee for the Protection of Plant Varieties, composed of two representatives of each of the Member Countries, is hereby created. The Board shall provide the Technical Secretariat of the Committee.

Article 38.- The Committee referred to in the foregoing Article shall have the following functions:

- (a) to consider the compilation of an up-to-date inventory of the present biodiversity of the Andean subregion and, in particular, of the plant varieties susceptible of registration;
- (b) to draw up guidelines for the standardization of procedures, examinations, laboratory tests and the deposit or growing of such samples as may be necessary for the registration of the variety;
- (c) to devise technical criteria for distinctness in relation to the state of the art, with a view to determining the minimum number of characteristics that have to vary for one variety to be considered different from another;
- (d) to analyze matters relating to the scope of protection of essentially derived varieties, and to propose common provisions thereon.

Article 39.- The recommendations of the Committee shall be submitted through the Board for consideration by the Commission.

TRANSITIONAL PROVISIONS

ONE- A variety that is not new on the date on which a Member Country's Register is opened for the filing of applications may be registered, notwithstanding the provisions of Article 4 of this Decision, if the following conditions are met:

- (a) the application is filed within the year following the opening date of the Register for the genus or species to which the variety belongs;
- (b) the variety has been entered in a register of cultivars in any of the Member Countries, or in a register of protected varieties in any country having special legislation on the protection of plant varieties which grants reciprocal treatment to the Member Country in which the application is filed.

The term of the breeder's certificate granted under this provision shall be proportional to the period already elapsed since the date of entry or registration in the country referred to in subparagraph (b) above. Where the variety has been entered in two or more countries, the relevant entry or registration shall be the one with the earliest date.

TWO.- The competent national authority in each Member Country shall implement this Decision within 90 days following the date of the publication thereof in the Official Gazette of the Cartagena Agreement.

THREE.- The Member Countries shall, before December 31, 1994, approve common provisions governing access to biogenetic resources and guaranteeing the biosecurity of the subregion, pursuant to the provisions of the Convention on Biodiversity adopted in Rio de Janeiro on June 5, 1992.

[End of Annex I,
Annex II follows]

DECISION NO. 351
COMMON PROVISIONS ON COPYRIGHT AND NEIGHBORING RIGHTS 1
(OF DECEMBER 17, 1993)

CHAPTER I
SCOPE OF PROTECTION

Article 1.- The provisions of this Decision are intended to afford adequate and effective protection to the authors of and other owners of rights in intellectual works in the literary, artistic or scientific field, whatever their nature or form of expression and regardless of their literary or artistic merit or purpose.

The neighboring rights referred to in Chapter X of this Decision are likewise protected.

Article 2.- Each Member Country shall grant the nationals of other countries protection no less favorable than that accorded to its own nationals in matters of copyright and neighboring rights.

Article 3.-. For the purposes of this Decision:

- (1) <author>
means the natural person who achieves the intellectual creation;
- (2) <performer>
means the person who performs, sings, reads, recites, interprets or in any way executes a work;
- (3) <competent national authority>
means the body appointed for the purpose by the relevant national legislation;
- (4) <copy>
means the physical medium in which the work is embodied as a result of an act of reproduction;
- (5) <owner of rights>
means the person, whether natural person or legal entity, to whom rights accorded by this Decision are transferred for any reason;
- (6) <distribution to the public>
means the making available to the public of the original or copies of the work by sale, rental or lending or in any other way;
- (7) <disclosure>
means the fact of making the work available to the public by any means or process;

¹ Spanish title: Decisión 351. Régimen Común sobre Derecho de Autor y Derechos Conexos.
Entry into force: December 21, 1993.

Source: Gaceta Oficial del Acuerdo de Cartagena, X--No. 145, of December 21, 1993.

Note: Translation by the International Bureau of WIPO.

- (8) <transmission>
means the sending of sounds or images and sounds over a distance for reception by the public;
- (9) <fixation>
means the incorporation of signs, sounds or images in a physical material that enables them to be perceived, reproduced or communicated;
- (10) <phonogram>
means any fixation exclusively of the sounds of a performance or of other sounds; phonographic and magnetic recordings shall be considered copies of phonograms;
- (11) <ephemeral recording>
means the sound or audiovisual fixation of a performance or broadcast made for a finite period by a broadcasting organization by means of its own facilities and used for the transmission of its own broadcasts;
- (12) <work>
means any original intellectual creation of artistic, scientific or literary character susceptible of disclosure or reproduction in any form;
- (13) <audiovisual work>
means any creation expressed by a series of linked images, with or without the incorporation of sound, which is intended essentially for showing by means of projection apparatus or any other means of communicating images and sounds, regardless of the characteristics of the physical medium in which the said work is embodied;
- (14) <work of applied art>
means an artistic creation with utilitarian functions or incorporated in a useful article, whether a work of handicraft or one produced on an industrial scale;
- (15) <three-dimensional work>
or <work of fine art> means an artistic creation intended to appeal to the aesthetic sense of the person perceiving it, such as a painting, drawing, engraving or lithograph; this definition does not, for the purposes of this Decision, include photographs, architectural works and audiovisual works;
- (16) <competent national office>
means the administrative body responsible for the protection and application of copyright and neighboring rights;
- (17) <broadcasting organization>
means the radio or television company that transmits programs to the public;
- (18) <producer>
means the person, whether natural person or legal entity, who takes upon himself the initiative and coordination of and responsibility for producing the work, for instance an audiovisual work or a computer program;
- (19) <producer of phonograms>
means the person, whether natural person or legal entity, on whose initiative and responsibility and under whose coordination the sounds of a performance or other sounds are first fixed;
- (20) <computer program (software)>
means the expression in words, codes, plans or any other form of a set of instructions which, on being incorporated in automated reading apparatus, is capable of causing a computer an electronic or similar device capable of processing information to execute a particular task or produce a particular result; the computer program shall likewise include technical documentation and users' manuals;

- (21) <publication>
means the production of copies which are then made accessible to the public with the consent of the owner of the corresponding rights, provided that the supply of such copies is such as to meet the reasonable needs of the public, due account being taken of the nature of the work;
- (22) <retransmission>
means the relaying of a signal or program received from another source, effected by the distribution of signs, sounds or images by wireless means or by wire, cable, optic fiber or other comparable medium;
- (23) <ownership>
means the status of owner of rights recognized by this Decision;
- (24) <fair use>
means use that does not interfere with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the author;
- (25) <personal use>
means the reproduction or other use of the work of another person, in a single copy, exclusively for an individual's own purposes, in cases such as research and personal entertainment.

CHAPTER II

SUBJECT MATTER OF PROTECTION

Article 4.- The protection granted by this Decision shall accrue to all literary, artistic and scientific works that may be reproduced or disclosed by any known or future means, including the following in particular:

- (a) works expressed in writing, that is, books, pamphlets and any other kind of work expressed in letters, signs or conventional marks;
- (b) lectures, addresses, sermons and other works of the same nature;
- (c) musical compositions with or without words;
- (d) dramatic and dramatico-musical works;
- (e) choreographic and mimed works;
- (f) cinematographic works and other audiovisual works expressed by any process;
- (g) works of fine art, including drawings, paintings, sculptures, engravings and lithographs;
- (h) works of architecture;
- (i) photographic works and works expressed by processes analogous to photography;
- (j) works of applied art;
- (k) illustrations, maps, sketches, plans, diagrams and three-dimensional works relating to geography, topography, architecture or science;
- (l) computer programs;
- (ll) anthologies or compilations of assorted works and also data bases, which, by the selection and arrangement of their contents, constitute personal creations.

Article 5.- Without prejudice to the rights of the author of the preexisting work and subject to his prior authorization, translations, adaptations, transformations or arrangements of other works shall be intellectual works distinct from the originals.

Article 6.- The rights recognized by this Decision shall be independent of the ownership of the material medium in which the work is embodied.

Article 7.- Only the form in which the ideas of the author are described, explained, illustrated or incorporated in the works shall be protected.

Neither the ideas contained in literary and artistic works, or the ideological or technical content of scientific works, nor the industrial or commercial exploitation thereof shall be eligible for protection.

CHAPTER III OWNERS OF RIGHTS

Article 8.- In the absence of proof to the contrary, the person whose name, pseudonym or other identifying mark is visibly shown on the work shall be presumed to be the author thereof.

Article 9.- A person other than the author, whether natural person or legal entity, may advertise ownership of the economic rights in the work in accordance with the provisions of the domestic legislation of the Member Countries.

Article 10.- Natural persons or legal entities shall exercise original or derived ownership, according to national legislation, of economic rights in works created for them on commission or by virtue of employment relations, in the absence of proof to the contrary.

CHAPTER IV MORAL RIGHTS

Article 11.- The author shall have the inalienable, unattachable, imprescriptible and unrenounceable right:

- (a) to keep the work unpublished or to disclose it;
- (b) to claim authorship of the work at any time;
- (c) to object to any distortion, mutilation or alteration of the work that is prejudicial to the integrity thereof or to the reputation of the author.

On the author's death, the exercise of moral rights shall pass to his successors in title for the period referred to in Chapter VI of this Decision. Once the economic rights have lapsed, the State or designated agencies shall assume the defense of the authorship and integrity of the work.

Article 12.- The domestic legislation of the Member Countries may grant other rights of moral character.

CHAPTER V ECONOMIC RIGHTS

Article 13.- The author, or his successors in title where applicable, shall have the exclusive right to carry out, authorize or prohibit:

- (a) the reproduction of the work by any means or process;
- (b) the communication of the work to the public by any means serving to convey the words, signs, sounds or images thereof;
- (c) the distribution of copies of the work to the public by means of sale, lending or hiring;
- (d) the importation into the territory of any Member Country of copies made without the authorization of the owner of rights;
- (e) the translation, adaptation, arrangement or other transformation of the work.

Article 14.- Reproduction shall be understood to mean the fixing of the work on a medium that permits it to be communicated or copies of all or part of it to be made by any means or process.

Article 15.- Communication to the public shall be understood to mean any act by which two or more persons, whether or not they are gathered together in the same place, may have access to the work without the prior distribution of copies to each one of them, and especially the following:

- (a) stage presentations, recitals, dissertations and public performances of dramatic, dramatico-musical, literary and musical works by any means or process;
- (b) the public projection or showing of cinematographic and other audiovisual works;
- (c) the transmission of any work by broadcasting or any other means of wireless distribution of signs, sounds or images;

the concept of transmission shall likewise include the sending of signals from a ground station to a broadcasting or telecommunication satellite;

- (d) the transmission of works to the public by wire, cable, optic fiber or other comparable process, whether free or on subscription;
- (e) the retransmission, by any of the means specified in the foregoing subparagraphs and by a broadcasting organization different from the original one, of the work broadcast by radio or television;
- (f) the emission or transmission in or to a place accessible to the public and by means of any appropriate apparatus, of a work broadcast by radio or television;
- (g) the public display of works of art or reproductions thereof;
- (h) public access to computer data bases by means of telecommunication, insofar as the said data bases incorporate or constitute protected works;

- (i) in general, the dissemination of signs, words, sounds or images by any known or future process.

Article 16.- The authors of works of art and, on their death, their successors in title shall have the inalienable right to be granted a share in the successive sales of the work by public auction or through a professional art dealer. The Member Countries shall enact provisions on the said right.

Article 17.- The domestic legislation of the Member Countries may grant other rights of economic character.

CHAPTER VI TERM OF PROTECTION

Article 18.- Without prejudice to the provisions of Article 59 the term of protection of the rights provided for in this Decision shall be not less than the life of the author and 50 years after his death.

Where the ownership of the rights accrues to a legal entity, the term of protection shall not be less than 50 years counted from the making, disclosure or publication of the work, as the case may be.

Article 19.- The Member Countries may provide, in accordance with the Berne Convention for the Protection of Literary and Artistic Works, that the term of protection for particular works shall be counted from the date of the making, disclosure or publication thereof.

Article 20.- The term of protection shall be counted from January 1 of the year following that of the death of the author or that of the making, disclosure or publication of the work, as appropriate.

CHAPTER VII LIMITATIONS AND EXCEPTIONS

Article 21.- The limitations and exceptions to which copyright is made subject by the domestic legislation of the Member Countries shall be confined to those cases that do not adversely affect the normal exploitation of the works or unjustifiably prejudice the legitimate interests of the owner or owners of the rights.

Article 22.- Without prejudice to the provisions of Chapter V and those of the foregoing Article, it shall be lawful, without the authorization of the author and without payment of any remuneration, to do the following:

- (a) quote published works in another work, provided that the source and the name of the author are given, and on condition that the quotations are made in accordance with fair practice and to the extent justified by the purpose;
- (b) reproduce by reprographic means for teaching or for the holding of examinations in educational establishments, to the extent justified by the purpose, articles lawfully

published in newspapers or magazines, or brief extracts from lawfully published works, on condition that such use is made in accordance with fair practice, that it does not entail sale or any other transaction for payment and that no profit-making purposes are directly or indirectly pursued thereby;

- (c) reproduce a work in single copies on behalf of a library or for archives whose activities are not conducted for any direct or indirect profit-making purposes, provided that the original forms part of the permanent stocks of the said library or archives and the reproduction is made for the following purposes:
 - (i) to preserve the original and replace it in the event of loss, destruction or irreparable damage;
 - (ii) to replace, in the permanent stocks of another library or archives, of an original that has been lost, destroyed or irreparably damaged;
- (d) reproduce a work for the purposes of judicial or administrative proceedings, to the extent justified by the purpose;
- (e) reproduce and distribute through the press, or transmit by broadcasting or public cable distribution, articles on topical subjects and commentaries on economic, political or religious subjects published in newspapers or magazines, or broadcast works of the same nature, insofar as reproduction, broadcasting or distribution to the public have not been expressly reserved;
- (f) reproduce and make accessible to the public, in connection with the reporting of current events by means of photography, cinematography, broadcasting or cable distribution to the public, works seen or heard in the course of such events, to the extent justified by the informatory purpose;
- (g) reproduce in the press or by broadcasting or transmission to the public political speeches and also dissertations, addresses, sermons, speeches delivered in the course of judicial proceedings or other works of similar character presented in public, for the purpose of reporting current events, to the extent justified by the purpose and subject to the right of the authors to publish collections of such works;
- (h) undertake the reproduction, transmission by broadcasting or cable distribution to the public of the image of an architectural work, work of fine art, photographic work or work of applied art located permanently in a place open to the public;
- (i) in the case of broadcasting organizations, make ephemeral recordings using their own facilities and for use in their own broadcasts of a work in respect of which they have the right of broadcasting; the broadcasting organization shall be obliged to destroy the recording within the time or under the circumstances provided for in national legislation;
- (j) effect the performance or execution of a work in the course of the activities of an educational institution, by the staff and students of the said institution, provided that no charge is made for admission and no direct or indirect profit-making purpose is pursued, and that the audience consists solely of the staff and students of the institution

or relations or guardians of pupils and other persons directly associated with the activities of the institution;

- (k) in the case of a broadcasting organization, make a transmission or retransmission of a work originally broadcast by it, provided that the public transmission or retransmission occurs at the same time as the original broadcast and the work is broadcast or transmitted publicly without any alteration.

CHAPTER VIII COMPUTER PROGRAMS AND DATA BASES

Article 23.- Computer programs are protected on the same terms as literary works. That protection shall extend not only to operating programs but also to application programs, in the form of either source codes or object codes.

In such cases the provisions of Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works on moral rights shall be applicable.

Without prejudice to the foregoing, the authors or owners of the computer programs may authorize such modifications as are necessary for the correct use of programs.

Article 24.- The owner of a lawfully circulating copy of a computer program may make a copy or adaptation of the said program insofar as:

- (a) it is essential for the use of the program;
- (b) it is made for archiving purposes, that is, for the sole purpose of replacing the lawfully acquired copy where damage or loss has rendered that copy unusable.

Article 25.- Reproduction of a computer program, including for personal use, shall require authorization by the owner of the rights, with the exception of a backup copy.

Article 26.- The introduction of a computer program in the memory of the computer concerned for the purposes of exclusive personal use shall not constitute unlawful reproduction of the said program.

It is consequently not lawful, without the consent of the owner of the rights, for two or more persons to make use of the program by means of the installation of networks, workstations or other comparable facilities.

Article 27.- The adaptation of a program created by the user for his sole use shall not constitute transformation within the meaning of this Decision.

Article 28.- Data bases shall be protected insofar as the selection or arrangement of the contents constitute an intellectual creation. The protection granted shall not extend to compiled data or information, but it shall not affect any rights subsisting in the works or material constituting the said data base.

CHAPTER IX TRANSFER AND ASSIGNMENT OF RIGHTS

Article 29.- Copyright may be transferred by succession in accordance with the provisions of the applicable national legislation.

Article 30.- The provisions on the transfer or assignment of economic rights and on licenses for the use of protected works shall be governed by the provisions of the domestic legislation of the Member Countries.

Article 31.- Any transfer of the economic rights, and also authorizations or licenses for use, shall be understood to be limited to the forms of exploitation and other procedures expressly agreed upon in the relevant contract.

Article 32.- In no case may the legal or compulsory licenses provided for in the domestic legislation of Member Countries exceed the limits permitted by the Berne Convention for the Protection of Literary and Artistic Works or by the Universal Copyright Convention.

CHAPTER X NEIGHBORING RIGHTS

Article 33.- The protection provided for neighboring rights shall in no way affect the protection of the copyright in scientific, artistic or literary works. Consequently, none of the provisions contained in this Chapter may be interpreted in such a manner as would diminish the said protection. In the event of conflict, the author's best interests shall always prevail.

Article 34.- Performers shall have the right to authorize or prohibit the communication to the public of their live performances in any form and the fixing and reproduction of their performances.

Nevertheless, performers may not object to the communication to the public of their performances where they in themselves are broadcast performances or are made from a previously authorized fixation.

Article 35.- In addition to the rights recognized in the foregoing Article, performers shall have the right to:

- (a) demand that their names be mentioned at or associated with every performance that takes place;
- (b) object to any distortion or mutilation of their performances or other act prejudicial thereto that might adversely affect their prestige or reputation.

Article 36.- The term of protection of the economic rights of performers may not be less than 50 years counted from January 1 of the year following that in which the performance took place or in which the fixation, if any, was made.

Article 37.- The producers of phonograms shall have the right to:

- (a) authorize or prohibit the direct or indirect reproduction of their phonograms;
- (b) prevent the importation of copies of the phonogram made without the authorization of the owner of rights;
- (c) authorize or prohibit the public distribution of the original and every copy thereof to the public by sale, rental or any other means;
- (d) charge remuneration for every use of the phonogram or copies thereof for commercial purposes, which remuneration may be shared among the performers on conditions laid down by the domestic legislation of the Member Countries.

Article 38.- The term of protection of the rights of producers of phonograms may not be less than 50 years, counted from January 1 of the year following that in which the fixation occurred.

Article 39.- Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit:

- (a) the retransmission of their broadcasts by any means or process;
- (b) the fixing of their broadcasts on a physical medium;
- (c) the reproduction of a fixation of their broadcasts.

Article 40.- The broadcast referred to in the foregoing Article shall include the production of program-carrying signals intended for a broadcasting or telecommunication satellite, and also distribution to the public by a body that broadcasts or disseminates the transmissions of others received by means of such a satellite.

Article 41.- The term of protection of the rights of broadcasting organizations may not be less than 50 years, counted from January 1 of the year following that in which the broadcast occurred.

Article 42.- In the cases allowed by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the domestic legislation of the Member Countries may set limits on the rights recognized in this Chapter.

CHAPTER XI

COLLECTIVE ADMINISTRATION

Article 43.- Societies for the collective administration of copyright and neighboring rights shall be subject to inspection and supervision by the State, and shall be required to obtain the appropriate operating license from the competent national office.

Article 44.- The affiliation of owners of rights to a society for the collective administration of copyright or neighboring rights shall be voluntary, unless expressly provided otherwise in the domestic legislation of the Member Countries.

Article 45.- The license referred to in Article 44 shall be granted subject to compliance with the following requirements:

- (a) the collective administration societies must be constituted in conformity with the laws governing such societies in each of the Member Countries;
- (b) the societies must have as their corporate objective the administration of copyright or neighboring rights;
- (c) they must undertake to agree to administer the copyright or neighboring rights entrusted to them in accordance with their aims and objectives;
- (d) the members of the society must be accorded appropriate rights of participation in the decisions thereof;
- (e) the rules of distribution, after deduction of administrative costs up to the maximum percentage allowed in legal or statutory provisions, must guarantee equitable apportionment among the owners of rights according to the actual use of the works, artistic performances or phonograms, as the case may be;
- (f) it must be deduced from the data supplied and information procured that the society in question meets the conditions necessary for ensuring the observance of legal provisions and efficient administration of the rights whose management it is soliciting;
- (g) they must have rules on membership, tariffs and distribution;
- (h) they must undertake to publish at least annually, in a medium with a wide national circulation, their balance sheets and accounts, and also the general tariffs for the use of the rights that they represent;
- (i) they must circulate to their members complete and detailed periodical information on all those of their activities of the society that may have a bearing on the exercise of the rights of the said members;
- (j) they must undertake, except where expressly authorized by the General Assembly, to ensure that remuneration collected is not assigned to purposes other than the covering of the actual cost of administering the rights concerned and the distribution of the balance of remuneration after deduction of such costs;
- (k) they must undertake not to admit members of other collective administration societies of the same type, whether national or foreign, that have not first expressly renounced such membership;
- (l) they must comply with the other requirements laid down in the domestic legislation of the Member Countries.

Article 46.- In the event of failure to comply with the provisions of this Chapter, the license of the collective administration society concerned may be revoked in accordance with the provisions of the domestic legislation of the Member Countries.

Article 47.- The competent national authority may impose the following sanctions on collective administration societies:

- (a) a warning;
- (b) a fine;
- (c) suspension;
- (d) any other sanction provided for in the domestic legislation of the Member Countries.

Article 48.- The royalties to be collected by the collective administration societies shall be proportional to the income derived from the use of works, artistic performances or phonographic productions, as the case may be, except where expressly provided otherwise in the domestic legislation of the Member Countries.

Article 49.- Collective administration societies shall be empowered, in terms specified in their own statutes and in the contracts that they conclude with foreign societies, to exercise the rights entrusted to them for administration and to assert those rights in administrative and judicial proceedings of any kind.

Article 50.- For their action to be enforceable against third parties, collective administration societies shall be obliged to register with the competent national office, in terms specified by the domestic legislation of the Member Countries, the names and titles of the members of their governing bodies, and also the instruments evidencing the mandates that they exercise on behalf of foreign associations or organizations.

CHAPTER XII

COMPETENT NATIONAL COPYRIGHT AND NEIGHBORING RIGHTS OFFICES

Article 51.- National copyright and neighboring rights offices shall be competent to:

- (a) organize and manage National Registers of Copyright and Neighboring Rights;
- (b) perform the function of licensing, inspecting and supervising collective administration societies or organizations;
- (c) intervene by conciliation or arbitration in disputes arising from the enjoyment or exercise of copyright or neighboring rights, in conformity with the provisions of the domestic legislation of the Member Countries;
- (d) impose, ex officio or at the request of a party, the sanctions provided for in this Decision or in the domestic legislation of the Member Countries;

- (e) conduct awareness campaigns and education and training programs in the fields of copyright and neighboring rights;
- (f) carry out, ex officio or at the request of a party, monitoring and inspection of activities liable to entail the exercise of copyright or neighboring rights, in the manner laid down by domestic legislation;
- (g) take such other action as the domestic legislation of the Member Countries may specify.

Article 52.- The protection afforded to literary and artistic works, performances and other productions covered by copyright and neighboring rights in accordance with this Decision shall not be subject to any kind of formality. Consequently, failure to register shall not prevent the enjoyment or exercise of the rights recognized in this Decision.

Article 53.- Registration shall be merely declaratory and shall not itself confer rights. Nevertheless, entry in the Register shall constitute a presumption that the facts and acts recorded in it are true, in the absence of proof to the contrary. Any entry shall be without prejudice to the rights of third parties.

Article 54.- No authority or person, whether natural person or legal entity, may authorize the use of a work, performance, phonographic production or broadcast, or lend his support to such use, if the user does not have the express prior authorization of the owner of the rights or his representative. In the event of non-compliance, that authority or person shall be jointly liable.

CHAPTER XIII PROCEDURAL ASPECTS

Article 55.- The procedures to be conducted before the competent national authorities shall observe due and adequate legal process, according to the principles of procedural economy, speed, equality of the parties before the law, efficiency and impartiality. They shall likewise permit the parties to have knowledge of all the procedural acts, except where specially provided to the contrary.

Article 56.- The competent national authority may order the following precautionary measures:

- (a) immediate cessation of the unlawful activities;
- (b) the attachment, sequestration, confiscation or preventive seizure, as appropriate, of copies produced in violation of any of the rights recognized by this Decision;
- (c) the attachment, seizure, confiscation or sequestration of the apparatus or materials used for the commission of the unlawful act.

Precautionary measures shall not be applicable to a copy acquired in good faith for exclusively personal use.

Article 57.- The competent national authority may likewise order the following:

- (a) payment, to the owner of the infringed rights, of adequate compensation or indemnification for damages sustained as a result of the infringement;
- (b) that the offender shall bear the cost of the proceedings that he has caused the owner of the infringed right to institute;
- (c) the permanent removal from distribution channels of the copies constituting the infringement of rights;
- (d) criminal sanctions equivalent to those applicable to offenses of comparable gravity.

CHAPTER XIV COMPLEMENTARY PROVISIONS

Article 58.- Computer programs, being works expressed in writing, and data bases, having the character of compilations, shall enjoy protection by copyright even where they have been created prior to the date of entry into force of this Decision.

Article 59.- Shorter terms of protection that are still current by virtue of the domestic legislation of the Member Countries shall be automatically extended to the expiration of the terms provided for in this Decision.

Nevertheless, the terms of protection specified in the domestic legislation of the Member Countries shall be applied where those terms are longer than the terms provided for in this Decision.

Article 60.- The rights in works that did not enjoy protection under national legal provisions prior to this Decision, owing to their not having been registered, shall automatically enjoy the protection recognized by this Decision without prejudice to rights acquired by third parties prior to the entry into force thereof, provided that it concerns use that has already been or is being made on the said date.

Article 61.- The Member Countries undertake, with a view to the consolidation of a system of communal administration, to ensure the best application of the provisions contained in this Decision, and to promote the autonomy and modernization of the competent national offices and of information systems and services.

CHAPTER XV
TRANSITIONAL PROVISIONS

Provision 1- Existing collective administration societies shall conform to the provisions in Chapter XI within a period not exceeding three months counted from the date of entry into force of this Decision.

[End of Annex II,
Annex III follows]

DECISION 391
COMMON REGIME ON ACCESS TO GENETIC RESOURCES

THE COMMISSION OF THE CARTAGENA AGREEMENT,

HAVING SEEN: The Third Temporary Provision of Commission Decision 345 and Board Proposal 284/Rev. 1;

WHEREAS:

The Member Countries have sovereignty over the use and development of their resources, a principle that has also been ratified by the Agreement on Biological Diversity, signed in Rio de Janeiro in June 1992 and legalized by the five Member Countries;

The Member Countries possess a sizeable biological and genetic heritage that should be preserved and developed on a sustainable basis;

The Andean countries are characterized by their multi-ethnic and pluricultural nature;

The biological diversity, the genetic resources, their endemism and rarity, as well as the know-how, innovations and practices of the native, Afro-American and local communities associated with them, have a strategic value in the international context;

It is necessary to recognize the historic contribution made by the native, Afro-American, and local communities to the biological diversity, its conservation and development and the sustained use of its components, as well as to the benefits generated by that contribution;

A close interdependence exists between the native, Afro-American and local communities and the biological resources that should be reinforced, in keeping with the conservation of the biological diversity and the economic and social development of those communities and of the Member Countries;

It is necessary to strengthen integration and scientific, technical and cultural cooperation, while moving ahead with the harmonious and comprehensive development of the Member Countries;

Genetic resources have an enormous economic value as a primary source of products and processes for industry;

Decides to approve the following:

COMMON REGIME ON ACCESS TO GENETIC RESOURCES**TITLE I**
ON THE DEFINITIONS

Article 1.- The following definitions shall apply for purposes of this Decision:

ACCESS: the obtaining and use of genetic resources conserved *in situ* and *ex situ*, of their by-products and, if applicable, of their intangible components, for purposes of research, biological prospecting, conservation, industrial application and commercial use, among other things.

ACCESS CONTRACT: agreement between the Competent National Authority in representation of the State, and a person that establishes the terms and conditions for access to genetic resources, their by-products and, if applicable, the associated intangible component.

ACCESS RESOLUTION: an administrative order issued by the Competent National Authority that executes the access to genetic resources or their by-products, after having fulfilled all requirements or conditions stipulated in the access procedure.

BIOLOGICAL DIVERSITY: the variability of living organisms of any source whatsoever, including, among others, land and ocean ecosystems and other aquatic ecosystems, as well as the ecological complexes of which they are a part. Covers the diversity that exists within each species and between species and within ecosystems as a result of natural and cultural processes.

BIOLOGICAL RESOURCES: individuals, organisms or parts of them, populations or any biotic component of value or of real or potential use that contains a genetic resource or its by-products.

BIOTECHNOLOGY: any technological application that utilizes biological systems or live organisms, parts of them or their by-products, to create or modify products or processes for specific uses.

BY-PRODUCT: a molecule, a combination or mixture of natural molecules, including crude extracts of live or dead organisms of biological origin that come from the metabolism of living beings.

COMPETENT NATIONAL AUTHORITY: State entity or public institution appointed by each Member Country, authorized to supply the genetic resource or its by-products and therefore to sign or supervise the access contracts, to take the actions provided for in this common regime and to ensure their performance.

COUNTRY OF ORIGIN OF THE GENETIC RESOURCE: country that possesses genetic resources *in situ* conditions, including those which, having been in *in situ* conditions, are now in *ex situ* conditions.

ECOSYSTEM: a dynamic complex of communities of human beings, plants, animals and micro-organisms and their non-living medium that interact as a functional unit.

EX SITU CONDITIONS: those in which the genetic resources are not found in *in situ* conditions.

EX SITU CONSERVATION CENTER: a person or institution recognized by the Competent National Authority that conserves and collects genetic resources or their by-products outside their *in situ* conditions.

GENETIC DIVERSITY: variation of genes and genotypes between and within species. Sum total of the genetic information contained in biological organisms.

GENETIC EROSION: the loss of or decrease in genetic diversity.

GENETIC RESOURCES: all biological material that contains genetic information of value or of real or potential use.

IN SITU CONDITIONS: those in which the genetic resources are found in their ecosystems and natural environments; in the case of domesticated or cultivated species or those having escaped domestication, in the environments where they developed their specific properties.

INTANGIBLE COMPONENT: all know-how, innovation or individual or collective practice, with a real or potential value, that is associated with the genetic resource, its by-products or the biological resource that contains them, whether or not protected by intellectual property regimes.

NATIONAL SUPPORT INSTITUTION: national institution devoted to biological research of a scientific or technical nature, that accompanies the applicant and participates jointly with it in the access activities.

NATIVE, AFRO-AMERICAN OR LOCAL COMMUNITY: a human group whose social, cultural and economic conditions distinguish it from other sectors of the national community, that is governed totally or partially by its own customs or traditions or by special legislation and that, irrespective of its legal status, conserves its own social, economic, cultural and political institutions or a part of them.

PROGRAM FOR THE LIBERALIZATION OF GOODS AND SERVICES: a program whose purpose is to eliminate levies and restrictions of all kinds on the importation of goods originating in the territory of any Member Country, pursuant to the provisions of the pertinent chapter of the Cartagena Agreement and all other applicable rules and regulations of its body of law.

SUPPLIER OF THE BIOLOGICAL RESOURCE: a person empowered by this Decision and complementary national legislation to supply the biological resource that contains the genetic resource or its by-products.

SUPPLIER OF THE INTANGIBLE COMPONENT: a person that, through an access contract and pursuant to this Decision and to complementary national legislation, is empowered to supply the intangible component associated with the genetic resource or its by-products.

SUSTAINABLE USE: use of the components of biological diversity in a way and at a rate that does not cause their reduction in the long term and that enables them to maintain their possibilities for satisfying the needs and the aspirations of existing and future generations.

SYNTHESIZED PRODUCT: a substance obtained through the artificial processing of genetic information or of information from other biological molecules. Includes semi-processed extracts and substances obtained by converting a by-product through an artificial process (hemisynthesis).

TITLE II. **ON THE PURPOSE AND AIMS**

Article 2.- The purpose of this Decision is to regulate access to the genetic resources of the Member Countries and their by-products, in order to:

- a) Establish the conditions for just and equitable participation in the benefits of the access;
- b) Lay the foundations for the recognition and valuation of the genetic resources and their by-products and of their associated intangible components, especially when native, Afro-American or local communities are involved;
- c) Promote conservation of the biological diversity and the sustainable use of the biological resources that contain genetic resources;
- d) Promote the consolidation and development of scientific, technological and technical capacities at the local, national and subregional levels; and
- e) Strengthen the negotiating capacity of the Member Countries.

TITLE III. **ON THE SCOPE**

Article 3.- This Decision is applicable to genetic resources for which is the Member Countries are the Countries of origin, to their by-products, to their intangible components and to the genetic resources of the migratory species that for natural reasons are found in the terdtodes of the Member Countries.

Article 4.- The following are excluded from the scope of this Decision:

- a) Human genetic resources and their by-products; and
- b) The exchange of genetic resources, their by-products, the biological resources containing them, or their associated intangible component among native, Afro-American and local communities of the Member Countries for their own consumption, based on their customary practices.

TITLE IV.
ON THE PRINCIPLES

CHAPTER I
ON THE SOVEREIGNTY OVER GENETIC RESOURCES AND
THEIR BY-PRODUCTS

Article 5.- The Member Countries exercise sovereignty over their genetic resources and their by-products and consequently determine the conditions for access to them, pursuant to the provisions of this Decision.

The conservation and sustainable use of the genetic resources and their by-products are regulated by each Member Country in keeping with the principles and provisions of the Biological Diversity Agreement and of this Decision.

Article 6.- The genetic resources and their by-products which originated in Member Countries are goods belonging to or the heritage of the Nation or of the State in each Member Country, as stipulated in their respective national legislation.

Those resources are inalienable, not subject to prescription and not subject to seizure or similar measures, without detriment to the property regimes applicable to the biological resources that contain those genetic resources, the land on which they are located or the associated intangible component.

CHAPTER II
ON THE RECOGNITION OF KNOW-HOW, INNOVATIONS AND TRADITIONAL
PRACTICES

Article 7.- The Member Countries, in keeping with this Decision and their complementary national legislation, recognize and value the rights and the authority of the native, Afro-American and local communities to decide about their know-how, innovations and traditional practices associated with genetic resources and their by-products.

CHAPTER III
ON TRAINING, RESEARCH, DEVELOPMENT AND THE TRANSFER OF
TECHNOLOGY

Article 8.- The Member Countries favor the establishment of scientific and technical training programs, as well as the execution of research projects that promote the identification, registration, characterization, conservation and sustainable use of the biological diversity and of the by-products of genetic resources that help to satisfy local and Subregional needs.

Article 9.- The Member Countries, recognizing that technology, including biotechnology, and both the access to it and its transfer are essential to the attainment of the objectives of this Decision, shall ensure and facilitate, through the corresponding contracts, the access to technologies that utilize genetic resources and their by-products, that are appropriate for the conservation and sustainable use of the biological diversity and that do not cause damage to the environment.

CHAPTER IV ON SUBREGIONAL COOPERATION

Article 10.- The Member Countries shall define mechanisms for cooperation on matters of common interest concerning the conservation and sustainable use of genetic resources and their by-products and the associated intangible components.

They shall also establish Subregional technical and scientific training programs on the information, follow-up, control and evaluation of activities connected with those genetic resources and their by-products and for the performance of joint research.

CHAPTER V ON NATIONAL TREATMENT AND RECIPROCITY

Article 11 .- The Member Countries grant each other national, and not discriminatory, treatment in matters relating to access to genetic resources.

Article 12 .- The Member Countries may grant national and non-discriminatory treatment to third Countries that give them equal treatment.

CHAPTER VI ON PRECAUTION

Article 13.- The Member Countries may adopt measures aimed to impeding genetic erosion or the degradation of the environment and of the natural resources. If the danger of serious and irreversible damage exists, the lack of scientific certainty should not be seized upon as a reason for postponing the adoption of effective measures.

The principle of precaution should be applied in keeping with the provisions in the Chapter on the Liberalization Program of the Cartagena Agreement and the other applicable rules and regulations of the body of law of this Agreement.

CHAPTER VII ON FREE SUBREGIONAL TRAFFIC IN BIOLOGICAL RESOURCES

Article 14 .- Provided that there is no access to the genetic resources contained in the biological resources referred to in this Decision, the provisions of this regime shall not hinder the use of and free movement of in those biological resources, nor the fulfillment of the provisions of the CITES Convention on health, food security, biosecurity and the obligations stemming from the Program of Liberalization of goods and services among Member Countries.

CHAPTER VIII ON THE JURIDICAL SECURITY AND TRANSPARENCY

Article 15.- Provisions, procédures and acts of government authorities of Member Countries with regard to access, shall be clear, effective, well-grounded and lawful.

The actions performed and information provided by individuals shall likewise be lawful, complete and truthful.

TITLE V. ON THE ACCESS PROCEDURE

CHAPTER I ON THE GENERAL ASPECTS

Article 16 .- All access procedures shall require the présentation, admittance, publication and approval of an application, the signing of a contract, the issuing and publication of the corresponding Resolution and the déclarative registration of the acts connected with that access.

Article 17 .- The applications for access and access contracts and, if appropriate, accessory contracts shall include conditions like the following:

- a) The participation of Subregional nationale in the research on genetic resources and their by-products and on the associated intangible component;
- b) Support for research within the jurisdiction of the Member Country of origin of the genetic resource or in any other Subregional Member Country that contributes to the conservation and sustainable use of the biological diversity;
- c) The strengthening of mechanisms for the transfer of know-how and technology, including biotechnology, that is culturally, socially and environmentally healthy and safe;
- d) The supply of information about the background and status of the science and about other matters that would contribute to a better knowledge of the situation regarding the genetic resource that originated in the Member Country, its by-product or synthesized product and its associated intangible component;
- e) The strengthening and development of the institutional capacity of the country or the Subregion in regard to genetic resources and their by-products;
- f) The strengthening and development of the capacities of the native, Afro-American and local communities with relation to the associated intangible components, the genetic resources and their by-products;
- g) The compulsory deposit of duplicates of all material collected, at institutions designated by the Competent National Authority;

- h) The obligation to inform the Competent National Authority about the results of the research carried out; and
- i) The terms for the transfer of the material to which third parties are given access.

Article 18.- The documents connected with the access procedure shall appear in a public file that the Competent National Authority shall keep.

That file shall consist of the following, at least: the application; the identification of the applicant, the resource supplier, and the national support person or institution; the site or area to which the access applies; the access methodology; the project proposal; the parts of the access contract that are not subject to confidentiality; the opinion about and registry of visits; and, if applicable, the evaluation studies of the economic, social and environmental impact or of the environmental permits.

Also included in the file are the Resolution executing the access, the reports supplied by the national support person or institution, and the follow-up and supervisory reports provided by the Competent National Authority or the entity delegated to perform that task. That file is open to consultation by any person.

Article 19 .- The Competent National Authority may give confidential reasons to data and information supplied to it in the course of the access procedure or the contract performance, and not previously disclosed, which could be put to unfair commercial use by third parties, unless the knowledge of this data and information by the public is necessary to protect the social interest or the environment.

Accordingly, the applicant should state the grounds for its petition, accompanied by a non-confidential summary that will become a part of the public file.

The information or documents referred to in the second paragraph of Article 18 of this Decision cannot be made confidential.

The confidential aspects shall be covered in a separate file, in the custody of the Competent National Authority, and may not be disclosed to third parties, unless that is judicially ordered.

Article 20.- If the petition for confidential treatment fails to comply with the requirements established in the previous article, the Competent National Authority shall deny it as a matter of right.

Article 21.- The Competent National Authority shall keep a public registry where the following information shall be entered, among other data: the Resolution that may possibly deny the petition, the access contract signing, amendment, suspension and termination dates, the date and number of the Resolution executing or canceling it, the date and number of the Resolution, award or sentence determining the nullity or imposing penalties, with an indication of their kind and the parties, and accessory contract signing, amendment, suspension, termination and nullification dates.

That registry shall be of a declaratory nature.

Article 22.- As stipulated in Article 15, the execution of the access is open ent upop the provision of full and reliable information by the applicant, as called for by law.

In this connectons the applicant should present the Competent National Authority with all of the information about the genetic resource and its by-products that it knows or is in a position to know at the moment the applicabon is presented. That information shall include the present and potential uses of the resource, by-product or intangible component, their sustainability and the dsks that could result from the access.

The statements made by the applicant in the application and in the contract, including their respective annexes, shall be in the nature of a sworn statement.

Article 23.- The permets, authorizations and other documents that support e inves igation, obtaining, provision, transfert etc., of biological resources, shall not determine, qualify or presume the authorization of the access.

Article 24.- It is forbidden to use genefic resources and their by-products in io ogica weapons or for practices that are harmful to the environment or to human health.

Article 25.- The transfer of technology shall be carded out in accordance wi e provisions contained in the body of law of the Cartagena Agreement, complementary national provisions and such rules and regulations on biosecudty and the environment as the Member Countries may approve.

The access to and transfer of technology subject to patents or o er in e lectual property dgths, shall be accomplished in keeping with the Subregional and complementary national provisions regulating that area.

CHAPTER II ON THE APPLICATION FOR ACCESS

Article 26.- The procedure starts with the presentation to the Competent National Authority of an application for access which should contain:

- a) Identification of the applicant and, if pertinent, documents that accredit its legal capacity to make a contract;
- b) Identification of the supplier of the genetic and biological resources and their by-products or of the associated intangible component;
- c) Identificabon of the national support person or institution;
- d) Identificabon and curdculum vitae of the person responsible for the project and of his working group;
- e) The access activity applied for; and
- f) The location or area where the access is to be carded out, with an indication of its geographical coordinates.

The application shall be accompanied by the project proposal, considering the referential model the Board approves through a Resolution.

Article 27.- If the application with its accompanying project proposal is complete, the Competent National Authority shall accept it, assign it a presentation or filing date, record it in the report and enter it with a declarative intent in the public registry it shall keep for that purpose and open the corresponding file.

Were the application to be incomplete, the Competent National Authority would return it without delay, indicating the information that is missing, so that it might be completed.

Article 28.- Within five working days following the date of entry of the application in the public registry referred to in the previous article, an extract of that application shall be published in a newspaper with broad national circulation and in another medium of the place where the access is to be effected, so that those that wish to might supply information to the Competent National Authority.

Article 29.- Within thirty working days after its registration, the Competent National Authority shall evaluate the application, make the visits it deems necessary and issue a technical and legal opinion about its propriety or invalidity. That period may be extended to up to sixty working days if the Competent National Authority considers it desirable.

Article 30.- When the time limit stipulated in the previous article expires, or earlier, if appropriate, the Competent National Authority shall accept or deny the application, based on the results of the opinion, the records of visits, the information supplied by third parties, and the fulfillment of the conditions established in this Decision.

The applicant shall be advised about the acceptance of the application and project proposal within five working days after this occurs. The access contract shall then be immediately drawn up and negotiated.

In the event that the application and project proposal are denied, this shall be communicated through a justified Resolution and the matter shall be considered finished. This does not, however, preclude the filing of such objections as are in order, according to the procedures established in the national legislation of Member Countries.

Article 31.- If required by the national law of the Member Country or if the Competent National Authority deems it necessary, the applicant shall comply with environmental provisions in effect.

The procedures that should be followed in that event shall be independent from those stipulated in this Decision and may be started beforehand. Nonetheless, they must be concluded before the expiration of the time limit stipulated in Article 29 and must be considered by the Competent National Authority in making its evaluation.

Were the Competent National Authority to require such studies, it could grant the applicant a supplementary period set exclusively in accordance with the time needed to complete and submit them for its consideration.

CHAPTER III ON THE ACCESS CONTRACT

Article 32.- The parties to the access contract are:

- a) The State, represented by the Competent National Authority; and
- b) The applicant requesting the access.

The applicant must be legally empowered to make a contract in the Member Country in which it requests the access.

Article 33.- The terms of the access contract must be in keeping with the provisions of this Decision and Member Country national legislation.

Article 34.- The access contract shall bear in mind the rights and interests of the suppliers of genetic resources and their by-products, the biological resources that contain them and the intangible component as applicable, in accordance with the corresponding contracts.

Article 35 .- When access is requested to genetic resources or their by-products with an intangible component, the access contract shall incorporate, as an integral part of that contract, an annex stipulating the fair and equitable distribution of the profits from use of that component.

The annex shall be signed by the supplier of the intangible component and the applicant for the access. It may also be signed by the Competent National Authority, in accordance with the provisions of national law of the Member Country. If that annex is not signed by the Competent National Authority, it shall be subject to the suspensive condition referred to in Article 42 of this Decision.

Failure to comply with the stipulations of the annex shall constitute grounds for the rescission and nullification of the access contract.

Article 36 .- The Competent National Authority may enter into access contracts with universities, research centers or well-known researchers to support the execution of several projects, as provided for in this Decision and in keeping with the national legislation of each Member Country.

Article 37 .- The ex-situ conservation centers or other institutions that perform activities involving access to genetic resources or their by-products and, if appropriate, the associated intangible component, should enter into access contracts with the Competent National Authority, pursuant to this Decision.

That Authority may likewise sign access contracts with third parties in regard to genetic resources of which the Member Country is the country of origin and which have been deposited at those centers, bearing in mind the rights and interests referred to in Article 34.

CHAPTER IV ON THE EXECUTION OF THE ACCESS

Article 38 .- Once the contract has been adopted and signed, the corresponding Resolution shall be issued in a joint act. This resolution shall then be published together with an extract of the contract, in the Official Newspaper or a newspaper with wide national circulation. As of that moment, the access shall be considered to have been granted.

Article 39.- Such contracts as are signed in violation of the provisions of this regime shall be null and void. The nullification procedure shall be subject to the national provisions of the Member Country in which it is invoked.

Article 40.- The rescission or resolution of the contract shall be motive for official cancellation of the registration by the Competent National Authority.

TITLE VI. ON THE ANCILLARY CONTRACTS TO THE ACCESS CONTRACT

Article 41.- Ancillary contracts are those that are signed in order to carry out activities connected with the genetic resource or its by-products, between the applicant and:

- a) The owner, possessor or manager of the land where the biological resource containing the genetic resource is located;
- b) The ex situ conservation center;
- c) The owner, possessor or manager of the biological resource containing the genetic resource; or
- d) The national support institution, with regard to activities that it should perform and that are not a part of the access contract.

Making an ancillary contract does not authorize access to the genetic resource or its by-product, and its contents are subject to the stipulations of the access contract as provided for in this Decision. The national support institution must be accepted by the Competent National Authority.

Article 42.- Such ancillary contracts as are signed shall include a condition that subjects their execution to that of the access contract.

As of that moment, they shall become effective and binding and shall be governed by the mutually agreed terms, the provisions of this Decision and applicable Subregional and national legislation. The responsibility for their execution and compliance lies only with the parties to the contract.

Article 43 .- Without detriment to what has been agreed upon in the accessory contract and independently of it, the national support institution shall be obliged to collaborate with the Competent National Authority in the follow-up and supervision of the genetic resources, by-products or synthesized products and associated intangible components, and to submit reports

about the activities for which it is responsible, in the way or with the frequency that the Authority stipulates, according to the access activity.

Article 44.- The nullity of the access contract produces the nullity of the ancillary contract.

The Competent National Authority may also terminate the access contract when the nullity of the ancillary contract is declared, if the latter is essential for the access.

Its amendment, suspension, rescission or resolution may likewise produce the amendment, suspension, rescission or resolution of the access contract by the Competent National Authority if it substantially affects the conditions of the latter contract.

TITLE VII. **ON THE LIMITATIONS TO ACCESS**

Article 45.- Member Countries may establish, through an express legal rule, partial or total limitations on access to genetic resources or their by-products in the following cases:

- a) Endemism, rarity or danger of extinction of species, subspecies, varieties or races or breeds;
- b) Vulnerability or fragility of the structure or functioning of the ecosystems that could worsen as a result of access activities;
- c) Adverse effects of access activities on human health or on elements essential to the cultural identity of nations;
- d) Undesirable or not easily controlled environmental effects of access activities on the ecosystems;
- e) Danger of genetic erosion caused by access activities;
Q Regulations on biosecurity; or
- g) Genetic resources or geographic areas rated as strategic.

TITLE VIII. **ON VIOLATIONS AND SANCTIONS**

Article 46.- Any person performing access activities without the respective authorization shall be liable for punishment.

Also to be sanctioned is any person carrying out transactions with regard to by-products or synthesized products of such genetic resources or the associated intangible component, that is not protected by the corresponding contracts, signed in keeping with the provisions of this Decision.

Article 47.- The Competent National Authority, pursuant to the procedure provided for in its own national legislation, may apply administrative sanctions, such as fines, preventive or definitive confiscation, temporary or definitive closing-down of establishments and disqualification of the violator from applying for new accesses in cases of violation of this regime.

Those sanctions shall be applied without detriment to the suspension, cancellation or nullification of the access, the payment of compensation for such damages and losses as are incurred, including those caused to the biological diversity, and the civil and criminal sanctions that may possibly be in order.

TITLE IX **ON THE NOTIFICATIONS BETWEEN MEMBER COUNTRIES**

Article 48.- The Member Countries shall notify each other immediately through the Board, of all applications for access and access resolutions and authorizations, as well as of the suspension and termination of such contracts as are signed.

They shall also advise each other about the signing of any bilateral or multilateral agreement on the subject, which must be in keeping with the provisions of this Decision.

Article 49.- Without prejudice to the stipulations of the previous article, the Member Countries shall immediately inform each other through the Board of all provisions, decisions, regulations, judgments, resolutions and other rules and acts adopted nationally that have to do with the provisions of this Decision.

TITLE X **ON THE COMPETENT NATIONAL AUTHORITY**

Article 50.- The Competent National Authority shall perform all of the functions conferred on it in this Decision and in Member Country national legislation. In this connection, it shall be empowered to:

- a) Issue the necessary internal administrative provisions to comply with this Decision and, until the appropriate Community rules and regulations are enacted, stipulate how the genetic resources and their by-products shall be identified and packed;
- b) Receive, evaluate, accept or deny applications for access;
- c) Negotiate, sign and authorize access contracts and issue the corresponding access resolutions;
- d) Ensure the diligence of suppliers of biological resources that contain genetic resources and of the intangible component;
- e) Keep the technical files and the Public Registry of Access to Genetic Resources and their by-products;

- f) Keep a directory of persons or institutions pre-qualified to perform scientific or cultural support tasks;
- g) Amend, suspend, nullify or terminate access contracts and arrange their cancellation, as the case may be, in keeping with the terms of those contracts, this Decision and Member Country legislation;
- h) Oppose the suitability of the national support institution proposed by the applicant and demand its replacement by another, suitable one;
- i) Supervise and control compliance with the contractual conditions and the provisions of this Decision and accordingly establish such monitoring and evaluation mechanisms as it deems advisable;
- j) Review, in keeping with this Decision, contracts involving access already signed with other institutions or persons and carry out the corresponding actions for repossession;
- k) Delegate supervisory activities to other institutions, while keeping the responsibility and direction over that supervision, in conformity with national legislation;
- l) Supervise the state of conservation of the biological resources containing the genetic resources;
- m) Coordinate continuously with its respective liaison institutions all matters having to do with fulfillment of the provisions of this Decision;
- n) Keep the national inventory of genetic resources and their by-products;
- o) Keep in continuous contact with the competent national offices for industrial property and set up appropriate information systems with them; and
- p) All such other functions as the domestic legislation of the Member Country itself may assign it.

TITLE XI
ON THE ANDEAN COMMITTEE ON GENETIC RESOURCES

Article 51 .- The Andean Committee on Genetic Resources is hereby created, such to be comprised of the Directors of the Competent National Authorities on matters of Access to Genetic Resources or their representatives, their advisors and such representatives of other interested sectors as each Member Country may designate.

The Committee shall be responsible for:

- a) Issuing national and Subregional recommendations for the best possible fulfillment of this Decision;

- b) Issuing technical recommendations on such matters as the Member Countries may submit for its consideration;
- c) Recommending the mechanisms for establishing an Andean information network on applications for access and access contracts in the Subregion;
- d) Recommending and promoting joint actions to strengthen Member Country capacity in research, management and transfer of technology connected with genetic resources and their by-products;
- e) Recommending to the Board for adoption through Resolutions, common documentation models, particularly those that will make it possible to easily verify the coding and identification of genetic resources and their by-products, as well as the legality of the access;
- f) Promoting management, surveillance, control and supervision of access authorizations relating to genetic resources and their by-products that exist in two or more Member Countries;
- g) Recommending and promoting joint emergency plans and warning mechanisms to prevent or resolve problems relating to access to genetic resources or their by-products;
- h) Taking cooperative actions with regard to genetic resources or their by-products;
- i) Drawing up their own internal regulations;
- j) Writing an explanatory manual of this Decision; and
- k) Such other functions as the Member Countries may assign to them.

COMPLEMENTARY PROVISIONS

FIRST .- The Member Countries shall, in keeping with their national legislation, set up or reinforce funds or other types of financial mechanisms financed by the profits from the access and resources from other sources to promote compliance with the aims of this Decision, under the direction of the Competent National Authority.

Through the Andean Committee on Genetic Resources, the Member Countries shall design and implement joint programs for the conservation of genetic resources and shall study the viability and desirability of creating an Andean Fund for their conservation.

SECOND.- The Member Countries shall not acknowledge rights, including intellectual property rights, over genetic resources, by-products or synthesized products and associated intangible components, that were obtained or developed through an access activity that does not comply with the provisions of this Decision.

Furthermore, the Member Country affected may request nullification and bring such actions as are appropriate in countries that have conferred rights or granted protective title documents.

THIRD .- The Competent National Offices on Intellectual Property shall require the applicant to give the registration number of the access contract and supply a copy of it as a prerequisite for granting the respective right, when they are certain or there are reasonable indications that the products or processes whose protection is being requested have been obtained or developed on the basis of genetic resources or their by-products which originated in one of the Member Countries.

The Competent National Authority and the Competent National Offices on Intellectual Property shall set up systems for exchanging information about the authorized access contracts and intellectual property rights granted.

FOURTH .- Such health certificates supporting the export of biological resources as are issued in accordance with Commission Decision 328, its amendments or addenda, shall incorporate the following statement at the end of the format: "Use of this product as a genetic resource is not authorized."

FIFTH .- The Competent National Authority may enter into, with the institutions referred to in Article 36, contracts for the deposit of genetic resources or their by-products or of the biological resources containing them, exclusively for purposes of their care, keeping those resources under its jurisdiction and control.

Likewise, it may make contracts that do not involve access, such as intermediation or administration contracts, in relation to genetic resources or their by-products or synthesized products, in keeping with the provisions of this Regime.

SIXTH.- When requesting access to genetic resources from protected areas or their by-products, the applicant must fulfill, in addition to the stipulations of this Decision, also the special national legislation on the subject.

FINAL PROVISIONS

FIRST.- Any disputes that may arise among Member Countries shall be settled as stipulated in the Andean body of law.

Any disputes that arise with third Countries must be settled according to the provisions of this Decision. If a dispute arises with a third country party to the Agreement on Biological Diversity, signed in Rio de Janeiro on June 5, 1992, the solution adopted must also abide by the principles established in that Agreement.

SECOND.- In negotiating the terms of access contracts to genetic resources originated in more than one Member Country or to their by-products and in carrying out activities connected with that access, the Competent National Authority shall bear in mind the interests of the other Member Countries, which may present their viewpoints and such information as they deem advisable.

THIRD.- The Board, through a Resolution and after hearing the opinion of the Andean Committee on Genetic Resources, may execute or adjust the procedure stipulated in Title V, Chapter's 1 and II of this Decision.

FOURTH.- This Decision shall become effective on the date of its publication in the official Newspaper of the Cartagena Agreement.

TEMPORARY PROVISIONS

FIRST.- On the date this Decision enters into force, those which possess, for purposes of access, genetic resources originated in the Member Countries, their by-products or associated intangible components, shall negotiate that access with the Competent National Authority pursuant to the provisions of this Decision. Accordingly, the Competent National Authorities shall set the time limits, which cannot exceed twenty-four months as of the date this Decision becomes effective.

Until this requirement is fulfilled, the Member Countries may disqualify such persons, as well as the institutions they represent or on whose account they act, from applying for new accesses to genetic resources or their by-products in the Subregion. This does not preclude the application of such sanctions as are in order once the time limit referred to in the previous paragraph expires.

SECOND.- Contracts or agreements signed by Member Countries or their public or State institutions with third parties in regard to genetic resources, their by-products, the biological resources containing them or associated intangible components, that are not in conformity with this Decision, may be renegotiated or may fail to be renewed, as applicable.

The renegotiation of such contracts or agreements, as well as the signing of new ones, shall be accomplished by common agreement among the Member Countries. To this end, the Andean Committee on Genetic Resources shall establish the common criteria.

THIRD.- The Member Countries may take such legal action as they deem advisable for the repossession of genetic resources of which they are the countries of origin, their by-products and the associated intangible components and for the collection of any damages and compensation to which they are entitled.

Only the State has the legal entitlement to the action for repossession of those genetic resources and their by-products.

FOURTH.- The Board, through a Resolution and after hearing the opinion of the Andean Committee on Genetic Resources, shall establish the necessary systems for the identification and packing of the genetic resources and, if applicable, their by-products.

FIFTH.- Within a period of no more than 30 working days after this Decision enters into force, the Member Countries shall designate the Competent National Authority on access to genetic resources and shall accredit it before the Board.

SIXTH.- The Member Countries, within a period of no more than 30 working days after this Decision enters into force, shall accredit before the Board their representatives to the Andean Committee on Genetic Resources.

SEVENTH.- The Member Countries shall adopt a common regime on biosecurity within the framework of the Agreement on Diversity. To that end, the Member Countries, in coordination with the Board, shall start the respective studies, particularly with regard to the cross-border movement of modified live organisms produced by biotechnology.

EIGHTH.- The Board shall draw up, within a period of three months after the Member Countries present their national studies, a proposal to establish a special regime or a harmonization regulation, as applicable, aimed at reinforcing the protection of know-how, innovations and traditional practices of native, Afro-American and local communities, in keeping with the provision of Article 7 of this Decision, ILO Convention 169 and the Agreement on Biological Diversity.

To that end, the Member Countries should present their respective national studies during the year after this Decision enters into effect.

NINTH.- The Member Countries shall design a training program to strengthen the capacity of the native, Afro-American and local communities to negotiate the intangible component within the context of access to genetic resources.

TENTH.- The Board, through a Resolution, shall adopt the reference models for the application for access to genetic resources and the access contract, within a period of no more than fifteen days after this Decision comes into effect.

Signed in the city of Caracas, Venezuela on the second of July of nineteen ninety-six.

[End of Annex III,
Annex IV follows]

DECISION 486
COMMON INTELLECTUAL PROPERTY REGIME
(NON OFFICIAL TRANSLATION)

THE COMMISSION OF THE ANDEAN COMMUNITY, HAVING SEEN:

Article 27 of the Cartagena Agreement and Commission Decision 344;

DECIDES:

To replace Decision 344 by the following Decision:
COMMON INTELLECTUAL PROPERTY REGIME

TITLE I
GENERAL PROVISIONS

On National Treatment

Article 1. - Each Member Country shall accord the nationals of other members of the Andean Community, the World Trade Organization, and the Paris Convention for the Protection of Industrial Property, treatment no less favorable than it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in articles 3 and 5 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in article 2 of the Paris Convention for the Protection of Industrial Property. Member Countries may also accord such treatment to the nationals of a third country under the terms of their respective domestic legislation.

On Most-Favored-Nation Treatment

Article 2.- With regard to the protection of intellectual property, any advantage, favor, privilege, or immunity granted by a Member Country to the nationals of any other Andean Community Member Country shall be accorded to the nationals of all other Members of the World Trade Organization or of the Paris Convention for the Protection of Industrial Property.

The stipulation set forth in the preceding paragraph shall be applicable without prejudice to the reservations provided for in articles 4 and 5 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

On the Biological and Genetic Heritage and Traditional Knowledge

Article 3.- The Member Countries shall ensure that the protection granted to intellectual property elements shall be accorded while safeguarding and respecting their biological and genetic heritage, together with the traditional knowledge of their indigenous, African American, or local communities. As a result, the granting of patents on inventions that have been developed on the basis of material obtained from that heritage or that knowledge shall be subordinated to the acquisition of that material in accordance with international, Andean Community, and national law.

The Member Countries recognize the right and the authority of indigenous, African American, and local communities in respect of their collective knowledge.

The provisions of this Decision shall be applied and interpreted in such a way that they do not contravene the stipulations of Decision 391 and its effective amendments.

On the Periods and Deadlines

Article 4.- The effective periods for carrying out the procedures stipulated in this Decision that are subject to publication or notification shall be counted as of the day following the notification or publication of the act involved, unless stipulated otherwise in this Decision.

Article 5.- When periods are given in days, these shall be considered working days, unless this Decision stipulates otherwise. If the period is stated in months or years, it shall be computed from date to date. If there is no day equivalent to the starting day of the period in the month of expiration, the last day of the month shall be considered the deadline. If the last day is not a working day, then the deadline shall be considered as having been extended to the following working day.

On the Notifications

Article 6.- The competent national office may set up a system of notification to adequately communicate its decisions to the interested parties.

On the Language

Article 7.- Application petitions addressed to the competent national office shall be submitted in Spanish.

Article 8.- All documents that are processed by the competent national offices shall be submitted in Spanish. Otherwise, they shall be accompanied by unauthenticated Spanish translations. The competent national office may, however, dispense with the presentation of the translations of those documents should it deem this advisable.

On the Claim of Priority

Article 9.- The first application for an invention or utility model patent or for the registration of register an industrial design or a trademark that is validly filed in another Member Country or with a national, regional, or international authority to which the Member Country is linked by a treaty establishing an analogous right of priority to that established in this Decision, shall confer on the applicant or the applicant's assignee the right of priority in filing for a patent or registration on the same subject-matter in the Member Country. The scope and effects of the right of priority shall be those provided in the Paris Convention for the Protection of Industrial Property.

The right of priority may be based on a previous application filed with the competent national office in the same Member Country, provided that a previous right of priority was not claimed in that application. In that case, filing a subsequent application claiming priority shall mean abandoning the previous application in respect of the subject matter that is common between the two.

Any application validly accepted for processing as provided for in Articles 33, 119, and 140 of this Decision or in such treaties as are applicable, is acknowledged to confer the right of priority.

In order to qualify for that right, an application claiming priority shall be filed within the following unextendable periods to be counted as from the filing date of the application whose priority is claimed:

- a) twelve months for patents on inventions and utility models; and,
- b) six months for registrations of industrial designs and trademarks.

Article 10.- For the purposes of the previous article, a declaration shall be submitted accompanied by the pertinent documentation claiming the priority of the previous application and stating its filing date, the office to which it was submitted, when it was granted, and the number assigned to it, if known. The competent national office may prescribe the payment of a fee for processing priority claims.

The declaration and the pertinent documentation shall be submitted together with or separately from the application within the following unextendable periods to be counted as from the filing date of the priority claim:

- a) in the case of patents on inventions or utility models: sixteen months; and,
- b) in the case of applications for registration of industrial designs or trademarks: nine months.

Also to be presented are a copy of the application whose priority is claimed, certified by the issuing authority, a certificate attesting to the application filing date issued by the same authority, and, if applicable, the proof of payment of the prescribed fee.

No formalities in addition to those stipulated in this article shall be required for purposes of the right of priority.

Article 11. - Failure to comply with the deadlines, present the documents, or pay the fee shall result in the loss of the priority claimed.

On Discontinuance and Abandonment

Article 12.- The applicant may discontinue the application at any time during the process. Discontinuance of a patent or registration application shall bring the administrative proceeding to an end as of the declaration of conclusion by the competent national office and the assigned presentation date shall be lost.

If the discontinuance predates the publication of the application, that application shall not be published. In the case of patents on inventions or utility models or the registration of an industrial design, the information shall be kept confidential and may not be consulted without written consent from the applicant unless the time-limit set forth in article 40 has been reached.

Article 13.- The stipulations of the previous article shall be applicable to the abandonment of the application proceeding as pertinent.

TITLE II
ON PATENTS

CHAPTER I
ON PATENTABILITY REQUIREMENTS

Article 14.- The Member Countries shall grant patents for inventions, whether goods or processes, in all areas of technology, that are new, involve an inventive step, and are industrially applicable.

Article 15.- The following shall not be considered inventions:

- a) discoveries, scientific theories, and mathematical methods;
- b) Any living thing, either complete or partial, as found in nature, natural biological processes, and biological material, as existing in nature, or able to be separated, including the genome or germ plasm of any living thing;
- c) literary and artistic works or any other aesthetic creation protected by copyright;
- d) plans, rules, and methods for the pursuit of intellectual activities, playing of games, or economic and business activities;
- e) computer programs and software, as such; and,
- f) methods for presenting information.

Article 16.- An invention may be deemed new when not included in the state of the art.

The state of the art comprises everything that has been made available to the public by written or oral description, use, marketing, or any other means prior to the filing date of the patent or, where appropriate, of the priority claimed.

Solely for the purpose of determining novelty, the contents of a patent application pending before the competent national office and having a filing date or priority application date earlier than the date of the patent or patent priority application under examination, shall likewise be considered part of the state of the art, provided that the said contents are included in the earlier application when published or that the period stipulated in Article 40 has concluded.

Article 17.- For the purposes of determining patentability, no account shall be taken of any disclosure of the contents of the patent during the year prior to the filing date of the application in the Member Country or during the year before the date of priority, if claimed, providing that the disclosure was attributable to:

- a) the inventor or the inventor's assignee;
- b) a competent national office that publishes the contents of a patent application filed by the inventor or the inventor's assignee in contravention of the applicable provision; or,

c) a third party who obtained the information directly or indirectly from the inventor or the inventor's assignee.

Article 18.- An invention shall be regarded as involving an inventive step if, for a person in the trade with average skills in the technical field concerned, the said invention is neither obvious nor obviously derived from the state of the art.

Article 19.- An invention shall be regarded as industrially applicable when its subject matter may be produced or used in any type of industry; industry being understood as that involving any productive activity, including services.

Article 20.- The following shall not be patentable:

a) inventions, the prevention of the commercial exploitation within the territory of the respective Member Country of the commercial exploitation is necessary to protect public order or morality, provided that such exclusion is not merely because the exploitation is prohibited or regulated by a legal or administrative provision;

b) inventions, when the prevention of the commercial exploitation within the respective Member Country of the commercial exploitation is necessary to protect human or animal life or health or to avoid serious prejudice to plant life and the environment, provided that such exclusion is not made merely because the exploitation is prohibited or regulated by a legal or administrative provision;

c) plants, animals, and essentially biological processes for the production of plants or animals other than non-biological or microbiological processes;

d) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals.

Article 21.- Products or processes already patented and included in the state of the art within the meaning of Article 16 of this Decision may not be the subject of new patents on the sole ground of having been put to a use different from that originally contemplated by the initial patent.

CHAPTER II ON THE PATENT OWNERS

Article 22.- The right to a patent belongs to the inventor and may be assigned or transferred by succession.

Patent owners may be natural or judicial persons.

If several persons make an invention jointly, they shall share the right to patent it.

If several persons make the same invention, each independently of the others, the patent shall be granted to the person or assignee with the first filing date or, where priority is claimed, date of application.

Article 23.- Without prejudice to the provisions of national law in each Member Country, in the case of inventions made in the course of an employment relationship, the employer, whatever its form and nature, may transfer part of the economic benefits deriving from the innovations to the employee inventors in order to promote research activity.

Entities receiving state funding for their research shall reinvest part of the royalties received from the marketing of those inventions to generate a continuing supply of research funds and encourage researchers by giving them a share of the proceeds from the innovations, in accordance with the legislation in each Member Country.

Article 24.- The inventor shall have the right to be cited as such in the patent or to oppose being so mentioned.

CHAPTER III ON PATENT APPLICATIONS

Article 25.- A patent application may cover only one invention or a group of interrelated inventions that constitute a single inventive concept.

Article 26.- Applications for patents shall be filed with the competent national office and shall contain:

- a) the petition;
- b) the description;
- c) one or more claims;
- d) one or more drawings, if needed to understand the invention which, shall be considered an integral part of the description;
- e) a summary;
- f) such powers of attorney as may be needed;
- g) proof of payment of the prescribed fees;
- h) a copy of the contract for access, if the products or processes for which a patent application is being filed were obtained or developed from genetic resources or byproducts originating in one of the Member Countries;
- i) if applicable, a copy of the document that certifies the license or authorization to use the traditional knowledge of indigenous, African American, or local communities in the Member Countries where the products or processes whose protection is being requested was obtained or developed on the basis of the knowledge originating in any one of the Member Countries, pursuant to the provisions of Decision 391 and its effective amendments and regulations;
- j) the certificate of deposit of the biological material, if applicable; and,

k) a copy of the document attesting to the transfer of the patent right by the inventor to the applicant or assignee.

Article 27.- The patent application petition shall be a form that shall include the following information:

- a) the application for a patent grant;
- b) the applicant's name and address;
- c) the nationality or address of the applicant and, should the applicant be a judicial person, the place of incorporation;
- d) the name of the invention;
- e) the name and address of the inventor, if a person other than the applicant;
- f) the name and address of the applicant's legal representative, if pertinent;
- g) the signature of the applicant or of the applicant's legal representative; and,
- h) the date, number, and office of filing of any such application for a patent or other patent protection as may have been filed or obtained abroad by the applicant or assignee in respect of part or all of the same invention claimed in the application being filed in the respective Member Country, if pertinent.

Article 28.- The description of the invention shall be sufficiently clear and complete to be understood and for the invention to be carried out by a person skilled in the art. The description shall contain the name of the invention and the following information:

- a) the technological sector to which the invention refers or in which it shall be applied;
- b) prior technology known to the applicant that would help the invention to be understood and examined and references to previous documents and publications that discuss the technology involved;
- c) a description of the invention in such a way that the technical problem and the solution provided by the invention may be understood, explaining the differences and possible advantages with respect to previous technology.
- d) a brief description of the drawings if there are any;
- e) a description of the best method known to the applicant for carrying out the invention, with the use of examples and references to the drawings if they are pertinent; and,
- f) a statement as to how the invention meets the condition of being capable of industrial application, if this is not clear from the description or the nature of the invention itself.

Article 29.- Where the invention refers to a product or a process involving biological material and the invention cannot be understood and carried out, as described, by a person skilled in the art, it must be accompanied by a deposit of the said material.

The material shall be deposited by the filing date in the Member Country or, where priority is claimed, the date of application. Deposits with an international authority recognized under the 1977 Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure or any other institution acknowledged by the competent national office as appropriate for this purpose shall be valid. In such cases, the name and address of the depositary institution, the date of deposit, and the number assigned by that institution to the deposit shall be included in the description.

The deposit of biological material shall be valid for granting a patent only if it is carried out in such a way that any interested person may obtain samples of that material by the date of expiration of the period stipulated in article 40, at the latest.

Article 30.- Claims shall specify the subject matter for which patent protection is sought. They must be stated clearly and concisely and be fully substantiated by the description.

Claims may be independent or dependent. A claim shall be independent when it defines the subject matter in respect of which protection is sought without referring to any previous claim. A dependent claim, on the other hand, defines the subject matter for which protection is sought by referring to a prior claim. A claim referring to two or more previous claims is considered a multiple dependent claim.

Article 31.- The summary shall consist of a synthesis of the technical explanation given in the patent application. That summary shall be used to provide technical information only and shall have no effect whatsoever on the interpretation of the scope of protection conferred by the patent.

Article 32.- No Member Country may require the fulfillment of patent application requirements additional to or other than those set forth in this Decision.

Without prejudice to the foregoing, should the competent national office, during the processing of the application, have any reasonable doubts about any of the elements included, it may request the applicant to provide the necessary substantiating evidence.

Article 33.- The date of its receipt by the competent national office shall be considered the application filing date, providing that the application contained the following elements:

- a) a statement that the applicant is applying for a patent;
- b) data identifying the applicant or person filing the application or that shall enable the competent national office to communicate with that person;
- c) a description of the invention;
- d) the drawings, if pertinent; and,
- e) the proof of payment of the prescribed fees.

Failure to comply with any of the requirements specified in this article shall cause the competent national office to reject the application for processing and no filing date shall be assigned to it.

Article 34.- The applicant for a patent may, at time during the processing, request the modification of the application, but that modification may not involve extending the scope of protection beyond the use indicated in the initial application.

The applicant may, likewise, request the correction of any material error.

Article 35.- Patent applicants may, at any time during the processing, request the conversion of their applications for an invention patent into applications for a utility model patent. That change in application shall be possible only if the nature of the invention permits that conversion.

An applicant may submit a petition for conversion of an application one time only. The converted application shall keep the original filing date.

The competent national offices may, at any stage of the processing, suggest that the applicant make a conversion in the patent being applied for and order an additional fee to be paid for filing the application for its conversion.

The applicant may accept or reject the suggestion on the understanding that if it is rejected the application shall continue to be processed as originally filed for.

Article 36.- Applicants may, at any time during the processing, divide their applications into two or more divisional applications, but none of these may have the effect of extending the scope of protection beyond the use indicated in the initial application.

The competent national office may, at any time during the process, ask the applicant to divide the application if it fails to comply with the requirement for the unity of the invention.

Each divisional application shall be entitled to keep the original filing date or, where priority is claimed, the initial date of application.

Where multiple or partial priorities are claimed, the applicant or the competent national office shall state what priority date or dates shall be applicable to the subject matters that each of these divisional applications shall cover.

For the purposes of the division of an application, the applicant shall file the necessary documents to complete each of the resulting applications.

Article 37.- The applicant may, at any moment during the processing, combine two applications into a single one, but this combination may not involve extending the scope of protection beyond the use indicated in the initial application.

No combination shall be permitted if the merged applications fail to comply with the requirement for the unity of the invention stipulated in article 25.

The combined application shall be entitled to keep the original filing date or, where priority is claimed, the initial date or dates of application.

CHAPTER IV ON THE PROCESSING OF THE APPLICATION

Article 38.- The competent national office shall examine the application within 30 days following its filing to ascertain whether it meets the conditions of form specified in articles 26 and 27.

Article 39.- If the examination of form reveals that the application does not fulfill the requirements referred to in articles 26 and 27, the competent national office shall request the applicant to complete those requirements within a period of two months following the date of notification. That period may be extended once, upon request, for an equal length of time without loss of priority.

If, on expiration of the specified period, the applicant has failed to comply with the required conditions, the application shall be considered abandoned and shall lose its order of preference. Without prejudice to this, the competent national office shall keep the information contained in the application confidential.

Article 40.- Within eighteen months after the filing date in the Member Country concerned or, where priority is claimed, after the date of application, the file shall assume a public nature and shall be open for consultation. The competent national office shall accordingly order the publication of that application in conformity with pertinent domestic provisions.

The applicant may request the publication of the application at any time after the examination of its form has been concluded, notwithstanding the stipulation of the previous paragraph. In that case, the competent national office shall order its publication.

Article 41.- A patent application file may not be consulted by third parties until the end of a period of eighteen months computed from its filing date, unless written consent has been obtained from the applicant.

Persons able to prove that the applicant for a patent has sought to assert against them rights deriving from that application may consult the file prior to publication without the consent of the said applicant.

Article 42.- Within a period of 60 days following the date of publication, any person with a legitimate interest may, one time only, submit valid reasons for contesting the patentability of the invention.

The competent national office shall grant once, upon request, a sixty-day extension in which to provide valid reasons for that opposition.

Reckless objections may be sanctioned if so stipulated by domestic law.

Article 43.- If any objections have been lodged, the competent national office shall request that the applicant present its arguments, submit documents, or rewrite the invention claims or description, as they see fit, within sixty days following that notification.

The competent national office shall grant applicants once only, upon request, a sixty-day extension in which to make their defense against the objections that have been presented.

Article 44.- The applicant shall request an examination be made of the patentability of the invention within six months after publication of the application, regardless of whether or not any objections have been filed. Member Countries may charge a fee for making the examination. If that period elapses without these applicant having requested the examination, their applications shall be considered to have been abandoned.

Article 45.- Were the competent national office to ascertain that their inventions are not patentable or fail to comply with any one of the requirements for granting patents stipulated in this Decision, it shall notify the applicants accordingly. These shall respond to that notification within sixty days after the date of notification. This period may be extended one time only for a period of thirty additional days.

The competent national office may notify applicants two or more times, pursuant to the preceding paragraph, should it deem such notifications necessary for its examination of the invention's patentability.

If those applicants fail to file an answer to the notification within the stipulated period or if, despite their explanations, the impediments to granting the patent continue to exist, the competent national office shall deny those patents.

Article 46.- The competent national office may request reports from experts or from scientific or technological bodies that are considered suitable, to get their opinions on the patentability of the invention. It may also, as it deems fit, request reports from other intellectual property offices.

If the examination of the patentability of the invention requires it, the applicant shall, at the request of the competent national office and within a period of no more than three months, submit one or several of the following documents connected with one or more foreign applications referring to all or part of the invention being examined:

- a) a copy of the foreign application;
- b) copies of the findings of the examinations of the novelty or patentability of the invention conducted with respect to the foreign application in question;
- c) a copy of any patent or other patent protection that may have been granted on the basis of this foreign application;
- d) a copy of any order or decision that may have been handed down rejecting or denying the foreign application; or,
- e) a copy of any order or decision that may have been handed down annulling or invalidating the patent or other patent protection that was granted on the basis of the foreign application.

The competent national office may accept the results of the examinations referred to under letter b) as sufficient to certify that the conditions for the invention's patentability have been fulfilled.

If the applicant fails to submit the documents that have been requested within the period stipulated in this article, the competent national office shall deny the patent.

Article 47.- The competent national office may, at the request of the applicant, suspend the processing of the patent application if any one of the documents that are to be submitted pursuant to article 46 b) and c) has not yet been obtained by the applicant or is presently being processed by a foreign authority.

Article 48.- If the findings of the final examination are favorable, the patent shall be granted. If they are partially unfavorable, the patent shall be granted only in respect of those claims that have been accepted. If they are entirely unfavorable, the patent shall be denied.

Article 49.- For organizing and classifying their patents, the Member Countries shall use the International Patent Classification established by the 1971 Strasbourg Agreement Concerning the International Patent Classification, together with its effective amendments.

CHAPTER V ON THE RIGHTS CONFERRED BY PATENTS

Article 50.- Patents shall have a term of twenty years counted from the filing date of the corresponding application in the Member Country.

Article 51.- The scope of the protection conferred by a patent shall be determined by the wording of the claims. The description and drawings, or the deposit of biological material where applicable, shall be used for the interpretation of the claims.

Article 52.- A patent shall confer on its owner the right to prevent third parties not having the owner's consent from the acts of:

a) where the subject matter of a patent is a product:

i) making the product;

ii) offering for sale, selling, or using the product; or importing it for these purposes; and,

b) where the subject matter of a patent is a process:

i) using the process; or,

ii) carrying out any of the acts that are specified under paragraph a) above with respect to a product obtained directly by that process.

Article 53.- A patent owner may not exercise the right referred to in the previous article with respect to the following acts:

a) acts carried out in a private circle and for non-commercial purposes;

b) acts carried out exclusively to experiment with the subject matter of the patented invention;

c) acts carried out exclusively for the purposes of teaching or scientific or academic research;

d) the acts referred to in article 5bis of the Paris Convention for the Protection of Industrial Property;

e) where the patent protects biological material that is capable of being reproduced, except for plants, using that material as a basis for obtaining a viable new material, except where the patented material must be used repeatedly to obtain the new material.

Article 54.- A patent shall not confer on its owner the right to proceed against a third party making commercial use of a product protected by a patent once that product has been introduced into the commerce of any country by the owner or another person authorized by the right holder or with economic ties to that patent owner.

For the purposes of the preceding paragraph, two persons shall be considered to have economic ties when one of the persons is able to exercise a decisive influence on the other, either directly or indirectly, with respect to the exploitation of the patent or when a third party is able to exert that influence over both persons.

Where the patent protects biological material that is capable of being reproduced, the patent coverage shall not extend to the biological material that is obtained by means of the reproduction, multiplication, or propagation of the material that was introduced into the commerce as described in the first paragraph, provided that it was necessary to reproduce, multiply, or propagate the material in order to fulfill the purposes for which it was introduced into commerce and that the material so obtained is not used for multiplication or propagation purposes.

Article 55.- Without prejudice to the provisions stipulated in this Decision with respect to patent nullity, the rights conferred by a patent may not be asserted against a third party that, in good faith and before the priority date or the filing date of the application on which the patent was granted, was already using or exploiting the invention, or had already made effective and serious preparations for such use or exploitation.

In such case, the said third party shall have the right to start or continue using or exploiting the invention, but that right may only be assigned or transferred together with the business or company in which that use or exploitation is taking place.

Article 56.- A patent grant or a patent application being processed may be assigned or transferred by succession.

Any patent assignment or transfer shall be registered with the competent national office. Failure to register shall render the assignment or transfer invalid with respect to third parties.

Patent assignments or transfers, in order to be registered, shall be in writing.

Any interested party may file for registration of a patent assignment or transfer.

Article 57.- The owner of a patent or of a patent application that is being processed may license one or more third parties to exploit the invention it covers.

Any license that is granted for the exploitation of a patent shall be registered with the competent national office. Failure to register shall render the license invalid with respect to third parties.

Licenses, in order to be registered, shall be in writing.

Any interested party may file for registration of a license.

The registered patent owner shall inform the competent national office about any change in the name or address of the right holder during the term of the license contract. Otherwise, any notification that may be made on the basis of the data entered in the registry shall be considered valid.

Article 58.- The competent national authority shall not register any license agreements for patent exploitation that do not conform to the provisions of the Common Regime for the Treatment of Foreign Capital and for Trademarks, Patents, Licenses, and Royalties, or that do not conform to Andean Community or domestic antitrust provisions.

CHAPTER VI ON THE OBLIGATIONS OF THE PATENT OWNER

Article 59.- Owners of patents shall be under the obligation to exploit their patented inventions in any Member Country, either directly or through a person they authorize to do so.

Article 60.- For the purposes of this Chapter, exploitation shall be understood to mean the industrial manufacture of the patented product or the full use of the patented process, including the distribution and marketing of the results thereof on a scale sufficient to satisfy the demands of the market. Exploitation shall also be understood to mean the importation of the patented product, including its distribution and marketing, where this is done on a scale sufficient to satisfy the demands of the market. Where the patent refers to a process that does not result in a product, the requirements for marketing and distribution shall not be enforced.

CHAPTER VII ON THE REGIME OF COMPULSORY LICENSING

Article 61.- At the expiry of a period of three years following a patent grant or of four years following the application for a patent, whichever is longer, the competent national office may grant a compulsory license mainly for the industrial manufacture of the product covered by the patent, or for full use of the patented process, at the request of any interested party, but only if, at the time of the request, the patent had not been exploited in the manner specified in articles 59 and 60, in the Member Country in which the license is sought, or if the exploitation of the invention had been suspended for more than one year.

Compulsory licenses shall not be granted if patent owners are able to give valid reasons for their failure to act, which may be reasons of force majeure or an act of God, in accordance with the domestic provisions in effect in each Member Country.

A compulsory license shall be granted only if, prior to applying for it, the proposed user has made efforts to obtain a contractual license from the patent holder on reasonable commercial terms and conditions and that such efforts were not successful within a reasonable period of time.

Article 62.- Decisions to grant a compulsory license, as stipulated in the previous article, shall be taken after the patent owners have been notified to present their arguments as they see fit within the following sixty days.

The competent national office shall specify the scope or coverage of the license, and in particular shall specify the period for which it is granted, the subject matter of the license, the amount of the remuneration, and the conditions for the payment thereof. The remuneration shall be set at an adequate level in accordance with the individual circumstances of each case and, in particular, the economic value of the authorization.

Opposition to a compulsory license shall not prevent its exploitation or have any effect on any periods that may be running. The filing of an objection shall not prevent the patent owner, in the meantime, from collecting the remuneration specified by the competent national office on the part unaffected by the objection.

Article 63.- At the request of the owner of the patent or the licensee, the conditions governing the compulsory license may be changed by the competent national office where new circumstances so dictate and, in particular, when the patent holder grants another license on terms that are more favorable than the existing ones.

Article 64.- The licensee shall exploit the licensed invention within a period of two years following the date the license was granted, unless that licensee is able to give valid reasons for inaction consisting of force majeure or an act of God. Otherwise, at the patent owner's request, the competent national office shall revoke the compulsory license.

Article 65.- Following the declaration by a Member Country of the existence of public interest, an emergency, or national security considerations, and only for so long as those considerations exist, the patent may be subject to compulsory licensing at any time. In that case, the competent national office shall grant the licenses that are applied for. The owner of the patent so licensed shall be notified as soon as is reasonably possible.

The competent national office shall specify the scope or extent of the compulsory license and, in particular, the term for which it is granted, the subject matter of the license, and the amount of remuneration and the conditions for its payment.

The grant of a compulsory license for reasons of public interest shall not reduce the right of the patent owner to continue exploiting it.

Article 66.- The competent national office may, either ex officio or at the request of a party, and after having obtained the consent of the national antitrust authority, grant compulsory licenses where practices are noted that are detrimental to the exercise of free competition, especially where they constitute an abuse by the patent owner of a dominant position in the market.

The need to correct anti-competitive practices shall be taken into account in determining the amount of remuneration to be paid in such cases.

The competent national office shall refuse termination of a compulsory license if and when the conditions which led to the granting of the license are likely to recur.

Article 67.- The competent national office shall grant a license, upon request by the owner of a patent whose exploitation necessarily requires the use of another patent, and that right holder has been unable to secure a contractual license to the other patent on reasonable commercial terms. That license shall, without prejudice to the provisions of article 68, be subject to the following conditions:

- a) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
- b) the owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent; and,
- c) the license authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 68.- In addition to the conditions provided for in the preceding articles, compulsory licenses shall be subject to the following:

- a) they shall be non-exclusive and may not be sublicensed;
- b) they shall be non-assignable, except with the part of the business or goodwill which permits its industrial use. This shall be evidenced in writing and registered with the competent national office. Otherwise, those assignments or transfers shall not be legally binding;
- c) they shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to them cease to exist and are unlikely to recur;
- d) their scope and duration shall be limited to the purposes for which they were authorized;
- e) in the case of patents protecting semi-conductor technology, a compulsory license shall be authorized only for public non-commercial use or to remedy a practice declared by the competent national authority to be anti-competitive in accordance with articles 65 and 66;
- f) they provide for payment of adequate remuneration according to the circumstances of each case, taking into account the economic value of the license, without prejudice to the stipulations of article 66; and,
- g) they shall be used predominantly for the supply of the domestic market.

Article 69.- Compulsory licenses that fail to comply with the provisions of this Chapter shall be devoid of any legal effect whatsoever.

CHAPTER VIII ON ACTS SUBSEQUENT TO THE GRANT

Article 70.- A patent owner may request the competent national office to modify the patent in order to enter any change in the name, address, residence or other information about the rights holder or the inventor or to amend or limit the scope of one or more of the claims. The owner of the patent may, likewise, request that any material error in the patent be rectified.

The provisions in respect of the modification or correction of an application shall be applicable as pertinent.

Article 71.- The owner of a patent may, through a declaration addressed to the competent national office, withdraw one or more patent claims or a claim to the patent as a whole. That withdrawal shall become effective as of the date the respective declaration is received.

Article 72.- The owner of a patent may divide it into two or more fractional patents. The provisions regarding the division of an application shall be applicable to that of patents, in all pertinent matters.

Article 73.- A patent owner may also combine two or more patents. The provisions regarding the combination of applications shall be applicable to these patents, in all pertinent matters.

Article 74.- The competent national office may establish the fees on acts carried out after the patent grant.

CHAPTER IX ON THE INVALIDATION OF THE PATENT

Article 75.- The competent national authority may, either ex officio or at the request of a party, and at any time, declare a patent null and void, where:

- a) the subject matter of the patent is not an invention according to the requirements stipulated in article 15;
- b) the invention fails to comply with the requirements for patentability set out in article 14;
- c) the patent was granted for an invention covered by article 20;
- d) the patent fails to disclose the invention, as required by article 28 and, if pertinent, article 29;
- e) the claims included in the patent are not fully substantiated by the description provided;
- f) use of the patent granted has been broader than was indicated in the original application and requires having to extend its scope of protection;
- g) when pertinent, the products or processes in respect of which the patent is being filed have been obtained and developed on the basis of genetic resources or their byproducts originating in one of the Member Countries, if the applicant failed to submit a copy of the contract for access to that genetic material;
- h) when pertinent, the products or processes whose protection is being requested have been obtained or developed on the basis of traditional knowledge belonging to indigenous, African American, or local communities in the Member Countries, if the applicant has failed to submit a copy of the document certifying the existence of a license or authorization for use of that knowledge originating in any one of the Member Countries; or,

i) there are grounds for absolute invalidation according to domestic legislation covering administrative acts.

Where the grounds specified above are applicable only to some of the claims or some parts of a claim, invalidation shall be pronounced only in respect of those claims or those parts of the said claim, as the case may be.

The patent, claim, or part of a claim that has been invalidated shall be deemed null and void as from the filing date of the patent application.

Article 76.- Where defects in administrative acts fail to produce absolute invalidation as specified in the preceding article, those acts shall be relatively invalidated. In such cases, the competent national authority shall, in conformity with domestic legislation, declare them null and void within a period of five years counted from the patent grant date.

Article 77.- The competent national authority may, where a patent has been granted to a person who has no right to it, annul that patent. Invalidation proceedings may be initiated only by the person who has a right to obtain that patent. That right of action shall lapse five years after the patent grant date or two years following the date on which the person to whom that right belongs learned about the use of the invention, whichever period expires first.

Article 78.- In invalidation proceedings, the competent national authority shall request the patent owners to present arguments and submit the proof they deem advisable.

Where that authority under the domestic law of a Member Country is the competent national office, the patent owner shall present the arguments and submit the proof referred to in the previous article within a period of two months after being notified thereof.

Before the expiry of the period stipulated in the previous article, the interested party may request an extension of two additional months.

Once the periods stipulated in this article have expired, the competent national office shall rule on the patent's invalidation and inform the parties of its decision.

Article 79.- The competent national authority may, where necessary to rule on the invalidation of a patent, request the patent owner to submit one or more of the documents referred to in article 46 with regard to the patent that is the subject matter of the proceeding.

CHAPTER X ON THE LAPSING OF THE PATENT

Article 80.- Annual fees prescribed by the competent national offices shall be paid in advance in order to keep a patent in force or to maintain a pending patent application, as the case may be.

The deadline for payment of each annual fee shall be the last day of the month of presentation of the invoice. Two or more annual fees may be paid in advance.

Annual fees shall be paid within a grace period of six months after the starting date of the corresponding annual period, together with the prescribed surcharge. The patent or pending application shall remain in full force during the grace period.

Failure to pay an annual fee as stipulated in this article shall result in the legal lapsing of the patent or the patent application.

TITLE III **ON UTILITY MODELS**

Article 81.- Any new shape, configuration, or arrangement of components of any device, tool, implement, mechanism or other object, or any part thereof, that permits improved or different operation, use, or manufacture of the object incorporating it, or that endows it with any utility, advantage, or technical effect that it did not have previously shall be considered a utility model.

Utility models shall be protected by patents.

Article 82.- The following shall not be considered utility models: sculptures, architectural works, or objects that are purely aesthetic in nature.

Processes and materials excluded from patent protection may not be the subject matter of utility model patents.

Article 83.- An applicant for a utility model patent may request its conversion into an invention patent or registration of an industrial model, provided that the subject matter of the original application so permits. In the latter case, it shall be necessary to fulfill the requirements stipulated in article 35.

Article 84.- The duration of the utility model shall be ten years, as of the application filing date in the Member Country concerned.

Article 85.- The provisions of this Decision in respect of invention patents shall be applicable to utility model patents, as pertinent. The only exceptions are the processing periods, which shall be reduced to one-half their length. Without prejudice to the foregoing, the period stipulated in article 40 shall be shortened to twelve months.

TITLE IV **ON THE LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED** **CIRCUITS**

CHAPTER I **DEFINITIONS**

Article 86.- The following definitions shall apply for purposes of this Title:

a) integrated circuit: a product, in final or intermediate form, of which at least one element is an active element and some or all of whose interconnections are an integral part of the body or surface of a piece of material that is intended to be used electronically;

b) layout-design: the three-dimensional arrangement of the elements, regardless of form, of which at least one is an active element, and their interconnection into an integrated circuit, as well as that three-dimensional arrangement prepared for use in an integrated circuit to be manufactured.

CHAPTER II ON THE REQUIREMENTS FOR PROTECTION OF LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

Article 87.- A layout-design shall be protected if it is an original design.

A lay-out design shall be considered original when it is the result of its creator's intellectual efforts and is not in common use in the integrated circuit industry.

Where composed of two or more elements in common use in the integrated circuit industry, a layout-design shall be considered original only if the combination of those elements, as an assembly, meets this requirement.

CHAPTER III ON THE RIGHT HOLDERS

Article 88.- The right to register a layout-design of an integrated circuit belongs to its designer. That right may be assigned or transferred by succession.

If two or more persons jointly prepare a layout-design, those persons shall share the right to protect it.

The right to protection of a layout-design created under a project or service contract entered into for this purpose or within the framework of an employment relationship in which the designer has such function, shall correspond to the person who contracted for the project or service, or the employer, unless otherwise stipulated under a contract.

CHAPTER IV ON THE APPLICATION FOR REGISTRATION

Article 89.- The application to register a layout-design of an integrated circuit shall be filed with the competent national office and shall contain the following information:

a) the petition;

b) a copy or drawing of the layout-design and, if commercially exploited, a sample of that integrated circuit;

- c) if pertinent, a statement of the date of first commercial exploitation of the integrated circuit anywhere in the world;
- d) if pertinent, the statement of the year the integration circuit was created;
- e) a description of the electronic operation to be performed by the integrated circuit in the layout-design;
- f) copies of any applications for registration or other protection filed for or obtained abroad by the applicants or their assignees, referring to all or part of the layout-design for which a registration application is being filed in the Member Country;
- g) such powers of attorney as may be needed; and,
- h) a proof of payment of the prescribed fee.

Article 90.- The petition to register an application for a layout-design of an integrated circuit shall be a form and shall include the following information:

- a) the request for the registration;
- b) the name and address of the applicant;
- c) the nationality or address of the applicant and, if the applicant is a juridical person, the site of incorporation;
- d) the name and address of the creator of the layout-design, if a person other than the applicant;
- e) the name and address of the applicant's legal representative, if pertinent;
- f) the date, number, and office where any other application for registration or other protection was filed or obtained abroad by the applicant or assignee in respect of all or part of the same layout design being applied for in the Member Country, if pertinent; and,
- g) the signature of the applicant or the applicant's legal representative.

Article 91.- Where the layout-design for which a registration application has been filed includes an industrial secret, the applicant shall file, in addition to the graphic representation required, a representation of the layout omitting, erasing, or distorting the parts containing that secret. It is necessary for the remaining parts to be sufficient to allow for identification of the layout-design.

Article 92.- The date of reception of an application by the competent national office shall be considered its filing date, provided that the application contained at least the following elements:

- a) an express or implicit statement that the application is being filed for the registration of a layout-design;
- b) data that shall permit identification of the applicant or person filing the application or enable the competent national office to communicate with that person;

- c) a graphic representation of the layout-design for which registration is being applied for; and
- d) the proof of payment of the prescribed fees.

Failure to comply with any one of the requirements specified in this article shall result in refusal by the competent national to process the application and no filing date shall be assigned to it.

CHAPTER V ON THE PROCESSING OF THE APPLICATION

Article 93.- The competent national office shall examine whether the subject matter of the application constitutes a layout-design as defined in article 86 and whether the application contains the information requested in articles 89, 90, and 91. The competent national office shall not examine the originality of the layout-design ex officio, unless reasoned opposition to the application has been presented.

Should any omission or defect be noted, the applicant shall be admonished to make the necessary correction within a period of three months, and that failure to do so shall be considered abandonment and shall be placed in the archives ex officio. If the applicant does not make the correction within the allotted period, the competent national office shall make that warning effective through a reasoned decision.

Article 94.- Having examined the application, the competent national office shall order its announcement through the publication in the official government gazette of a notice to be paid by the interested party.

The pertinent provisions in respect of applications for investment patents shall be applicable to the publication of the notice.

Article 95.- Any interested person may lodge a substantiated objection with the competent national office, including information and documents that would be useful for ascertaining the registerability of a layout-design.

Pertinent provisions in respect of applications for invention patents shall be applicable to the objections.

Article 96.- If the stipulated requirements are fulfilled, the competent national office shall register the layout design and issue a registration certificate containing the data included in the corresponding registry.

CHAPTER VI ON THE RIGHTS CONFERRED BY REGISTRATION

Article 97.- If the layout-design has been exploited commercially anywhere in the world, the application for registration shall be filed with the competent national office of the Member Country concerned within a period of two years from its first commercial exploitation. If the application is filed after the expiration of that period, the registration shall be denied.

A layout-design not having been commercially exploited anywhere in the world may be registered only if applied for to a competent national office of a Member Country no later than 15 years after the last day of the year the layout was created. If the application is filed after that period has expired, its registration shall be denied.

Article 98.- Exclusive rights over a registered layout-design shall have a duration of ten years from the oldest of the following dates:

- a) the last day of the year the layout-design was first commercially exploited anywhere in the world, or
- b) the filing date of an application for registration with the competent national office of the Member Country concerned.

The term of protection of a registered layout-design shall lapse in any case at the conclusion of a period of 15 years counted from the last day of the year in which the layout-design was created.

Article 99.- The protection shall be applied irrespective of whether the integrated circuit in which the protected layout-design has been incorporated has been manufactured and irrespective of whether the layout-design has been incorporated into an integrated circuit.

Registration of a layout-design of an integrated circuit confers on its holder the right to impede third persons from performing any of the following acts:

- a) reproducing, through incorporation into an integrated circuit or in any other way, all or part of the protected layout-design that complies with the requirements for originality stipulated in article 87;
- b) marketing, importing, offering for sale, selling, or otherwise distributing a protected layout-design or an integrated circuit in which a protected layout-design is incorporated; or
- c) marketing, importing, offering for sale, selling, or otherwise distributing an article incorporating such a protected integrated circuit, only insofar as it continues to contain an unlawfully reproduced layout-design.

Protection conferred by registration shall cover only the layout-design itself, and shall not extend to any idea, process, system, technique, or data encoded or incorporated into the layout-design.

Article 100.- The right conferred by registration of the layout-design only may be asserted against acts having industrial or commercial purposes. Registration shall not confer the right to impede the following acts:

- a) acts carried out in a private circle and for non-commercial purposes;
- b) acts carried out exclusively for purposes of evaluation, analysis, or experimentation;
- c) acts carried out exclusively for purposes of teaching or scientific or academic research;

d) acts referred to in article 5 of the Paris Convention for the Protection of Industrial Property.

Article 101.- Registration of a layout-design shall not give the holder the right to prevent third parties from engaging in acts of commerce in respect of registered layout-designs, integrated circuits in which a protected layout-design is incorporated, or articles containing those integrated circuits after the introduction of the layout-design into the commerce of any country by the right holder or by any other person with the consent of or having economic ties to that right holder.

For purposes of the preceding paragraph, two persons shall be considered to have economic ties when one of the persons is able to exercise a decisive influence over the other, either directly or indirectly, with respect to exploitation of the layout-design, or when a third party is able to exert that influence over both persons.

Article 102.- The right holder to a registered layout-design may not prevent a third party from engaging in acts of industrial or commercial exploitation in respect of a layout-design created by another person through the evaluation or analysis of the protected layout-design, where the layout-design thereby created fulfills the requirements for originality stipulated in Article 87. Nor may that right holder prevent those acts in respect of integrated circuits in which the layout-designs so created are incorporated or of articles incorporating those integrated circuits.

Article 103.- The right holder of a registered layout-design may not prevent a third party from carrying out the acts cited in article 99 with respect to another layout-design originally created by a third party, even if identical.

Article 104.- Performance of any of the acts referred to in article 99 in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit shall not be considered an infringement of rights to a registered design, where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. After the time that such person has received sufficient notice that the layout-design was unlawfully produced, that person may continue to perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such layout-design.

Article 105.- A layout-design registration that has been granted or is being processed may be assigned or transferred by succession.

Any assignment or transfer of a layout-design registration shall be filed with the competent national office. Failure to register that assignment or transfer shall render it legally invalid in respect of third parties.

Assignments or transfers, in order to be registered, shall be in writing.

Any interested person may apply for registration of an assignment or transfer.

CHAPTER VII ON THE LICENSING SYSTEM

Article 106.- The right holder for a layout-design that is registered or for which registration has been filed may license one or more parties to exploit that lay-out design.

Any license to use the layout-design shall be registered with the competent national office. Failure to register the license shall render it invalid with respect to third parties.

Licenses, in order to be registered, shall be in writing.

Any interested party may file for registration of a license.

The registered right holder shall inform the competent national office of any change in the name or address of the registered layout-design right holder during the term of the licensing contract. Otherwise, any notification that may be made on the basis of the data entered in the registry shall be considered valid.

Article 107.- The competent national authority may, given a lack of exploitation or for reasons of public interest, in particular a national emergency, or for public health or natural security considerations, or to remedy an anti-competitive practice, and at the request of an interested party or of a competent authority, order the following at any time:

a) that layout-designs that are registered or for which registration has been filed shall be used or exploited industrially or commercially by a government institution or by one or more public or private legal entities that have been expressly appointed to do so; or

b) that the said layout-design shall be subject to the granting of one or more compulsory licenses, in which case the competent authority may grant such a license to any person who applies for it, subject to the conditions that have been stipulated for that purpose.

The conditions that have been stipulated for granting compulsory licenses with respect to invention patents shall be applicable to the granting of a compulsory licenses in regard to a layout-design.

CHAPTER VIII ON THE INVALIDATION OF THE REGISTRATION

Article 108.- The competent national authority may, either ex officio or at the request of a party and at any time, declare the registration of a layout-design null and void, where:

a) the subject matter of the registration is not a layout-design according to the requirements stipulated in article 86;

b) the registration fails to comply with the requirements for protection set forth in article 87;

c) the registration was granted for a layout design applied for after the expiration of one of the periods established in article 97; or,

d) there are grounds for declaring the registration to be null and void according to domestic legislation covering administrative acts.

Where the grounds specified above are applicable to only a part of the layout-design, invalidation shall be pronounced only in respect of that part, as pertinent, leaving the registration valid for the other parts, provided that as a whole the layout-design complies with the requirements for originality stipulated in article 87.

The layout-design or the part of it that has been invalidated shall be deemed null and void as of the filing date of the application for its registration.

Article 109.- Where defects in administrative acts fail to produce absolute invalidation as specified in the preceding article, those acts shall be invalidated relatively. In such cases, the competent national authority may, in conformity with domestic legislation, declare them null and void within a period of five years counted from the date of registration.

Article 110.- The competent national authority may, where a layout- design registration has been granted to a person that has no right to it, annul that registration. The invalidation proceeding may be brought only by the person with a right to registration of that layout-design. That right of action shall lapse five years from the date the registration was granted or two years following the date on which the person to whom that right belongs learned about the marketing in the Member Country of the product incorporating that layout-design, whichever period expires first.

Article 111.- In invalidation proceedings, the competent national authority shall request registered right holders to present their arguments and submit the proof they deem advisable.

Where that authority, under the domestic law of a Member Country, is the competent national office, the registered right holder shall present the arguments and submit the proof referred to in the previous article within a period of two months following notification.

Before the expiration of the period stipulated in the previous article, the interested party may request an extension of two additional months.

Once the periods stipulated in this article have expired, the competent national office shall rule on the invalidation of the registration and notify the parties of its decision.

Article 112.- The competent national authority may, where necessary to rule on the invalidation of a registration, request the right holder to submit one or more of the documents referred to in article 89 with regard to the registration that is the subject matter of the proceeding.

TITLE V
ON INDUSTRIAL DESIGNS

CHAPTER I
ON REQUIREMENTS FOR PROTECTION

Article 113.- The particular appearance of a product that results from any arrangement of lines or combination of colors, or any two-dimensional or three-dimensional outward shape, line, outline, form, texture, or material, without the intended use or purpose of the said product being thereby changed, shall be considered an industrial design.

Article 114.- The right to register an industrial design belongs to the designer and may be assigned or transferred by succession.

Registration right holders may be natural persons or legal entities.

If several persons make an industrial design jointly, they shall share the right to its registration.

If several persons make the same industrial design, each independently of the others, registration shall be granted to the person or assignee with the first filing date or, where priority is claimed, date of application.

Article 115.- Industrial designs that are new shall be registrable. An industrial design shall not be considered new if, before the filing date or validly claimed priority date, it has been made accessible to the public in any place or at any time, by description, use, or any other means.

An industrial design shall not be new by virtue of the mere fact that it embodies secondary differences in relation to earlier creations, or that it refers to a category of products different from that to which the said creations belong.

Article 116.- The following creations shall not be registrable:

a) industrial designs when, the prevention of the commercial exploitation of which within the territory of the Member Country where registration is being applied for, is necessary to protect morality or public order. To those ends, commercial exploitation of an industrial design shall not be considered contrary to morals and public order merely by reason that the exploitation is prohibited or regulated by a legal or administrative provision;

b) industrial designs the appearance of which was dictated essentially by technical or functional considerations and that fail to incorporate any arbitrary contribution by the designer; and,

c) industrial designs that consist only of a form the exact reproduction of which proved necessary in order to permit the mechanical assembly or connection of the product incorporating the design with another product of which it is a part. This prohibition shall not be applicable to products in which the design consists of another way to permit the assembly or the multiple connection of the product or of its connection within a modular system.

CHAPTER II ON THE REGISTRATION PROCEDURE

Article 117.- An application to register an industrial design shall be filed with the competent national office and shall contain the following: a) the petition;

b) a graphic or photographic representation of the industrial design. This representation, in the case of two-dimensional designs incorporated onto a flat material, may be replaced by a sample of the product incorporating the design;

c) such powers of attorney as may be needed;

d) proof of payment of the prescribed fees;

e) a copy of the document recording the ceding or transfer to the applicant of the right to register the industrial design, if applicable; and,

f) copies of any applications for registration or other protection of an industrial design filed abroad by the applicant or assignee in respect of the same design for which a registration application or claim is being filed in the respective Member Country.

Article 118.- The petition for the industrial design registration application shall be a form and shall include the following information:

a) the request for registration of the industrial design;

b) the name and address of the applicant;

c) the nationality address of the applicant and, if the applicant is a legal entity, the site of incorporation;

d) an indication of the kind or type of product to which the design shall be applied and the category and sub-category of such products;

e) the name and address of the designer, if other than the applicant;

f) the date, number, and identification of the office where any applications for registration or other protection of an industrial design were filed or obtained abroad by the applicant or assignee in respect of the same design claimed in the application being filed in the respective Member Country, if applicable;

g) the name and address of the applicant's legal representative, if pertinent; and,

h) the signature of the applicant or the applicant's legal representative.

Article 119.- The date of its receipt by the competent national office shall be considered the application filing date, provided that the application contained at least the following elements:

a) a statement that the applicant is filing for the registration of an industrial design;

b) data identifying the applicant or person filing the application that will enable the competent national office to communicate with that person;

c) a graphic or photographic representation of the industrial design. This representation, in the case of two-dimensional designs incorporated onto a flat material, may be replaced by a sample of the product incorporating the design; and,

d) a proof of payment of the prescribed fees.

Failure to comply with any of the requirements specified in this article shall cause the competent national office to reject the application for processing and no filing date shall be assigned to it.

Article 120.- The competent national office shall examine the application within 15 days following the filing to ascertain whether it meets the terms and conditions conditions of form specified in articles 117 and 118.

If the examination of terms and conditions reveals that the application does not fulfill the requirements referred to in the preceding paragraph, the competent national office shall notify the applicant to complete those requirements within a period of thirty days following the date of notification. The said period may be extended once, upon request, for an equal length of time without loss of priority.

If, on expiration of the specified period, the applicant has failed to comply with the required conditions, the application shall be considered abandoned and shall lose its order of priority. Without prejudice to this, the competent national office shall maintain the information contained in the application confidential.

Article 121.- If the application fulfills the stipulated requirements, the competent national office shall order its publication.

Article 122.- Within a period of thirty days following the date of publication, any person with a legitimate interest may, one time only, present valid reasons for contesting the registration of industrial design.

The competent national office shall grant such persons once, upon request, an additional period of thirty days in which to present valid reasons for their opposition.

Reckless objections may be sanctioned if so stipulated by domestic legislation.

Article 123.- If any objections have been lodged, the competent national office shall request that the applicants present their arguments or submit documents, as they see fit within thirty days following that notification.

The competent national office shall, upon request, grant an additional period of thirty days in which to make a defense against the objections that have been raised.

Article 124.- Upon expiration of the period stipulated in the preceding article or should no objections have been raised, the competent national office shall conduct an examination to ascertain whether the subject matter of the application complies with the requirements established in articles 113 and 116.

The competent national office shall not make an examination ex officio of the novelty of the subject matter of the application if no valid reasons are presented based upon the existence of a prior right or the novelty of the industrial design.

Without prejudice to the foregoing, if the lack of novelty of an industrial design is glaringly obvious, the competent national office shall reject the application ex officio.

Article 125.- An application for registration of an industrial design may not be consulted by third parties until publication has been ordered at the conclusion of the stipulated period, except where written consent has been obtained from the applicant.

Any parties who prove that the application for registration of an industrial design is attempting to use against them of rights conferred on the applicant for registration of an industrial design by the said application may consult the file before its publication without the consent of the applicant.

Article 126.- The competent national office shall grant the registration of the industrial design and issue the corresponding certificate to the rights holder upon fulfillment of the stipulated requirements. Failure to comply with those requirements shall cause the competent national office to reject the application.

Article 127.- Member Countries shall use the International Classification for Industrial Designs established by the Locarno Agreement of October 8, 1968 and its effective amendments to organize and classify industrial designs.

CHAPTER III ON THE RIGHTS CONFERRED BY REGISTRATION

Article 128.- Registration of an industrial design shall be for a term of ten years, counted from the filing of the application in the Member Country.

Article 129.- Registration of an industrial design shall confer on the owner thereof the right to prevent third parties from making use of the design concerned. By virtue of that prohibition, the owner of the registration shall be entitled to proceed against any third party who, without the consent of the right holder, manufactures, imports, offers for sale, markets, or makes commercial use of products that incorporate or reproduce the industrial design.

Registration shall likewise confer the right to proceed against any person who produces or markets an article whose design only presents minor differences with respect to the protected design or where appearance is the same as the latter protected design.

Article 130.- The protection accorded to an industrial design shall not apply to elements or characteristics of the design dictated essentially by technical or functional considerations or that fail to incorporate any arbitrary contribution by the designer.

The protection accorded to an industrial design shall not apply to the exact reproduction of such elements or characteristics as may be needed to allow the product incorporating the design to be mechanically assembled or joined to another product of which it is a part. This restriction shall not apply where the design assumes a particular form to allow for the

assembly or multiple connections of the products or the connection of those products within a modular system.

Article 131.- Registration of an industrial design shall not confer the right to proceed against a third party who makes commercial use of a product incorporating or reproducing the design once it has been introduced into the commerce of any country by the right holders or another person authorized by them or with economic ties to those right holders.

For purposes of the preceding paragraph, two persons shall be considered to have economic ties when one of the persons is able to exercise a decisive influence over the other, either directly or indirectly, with respect to the exploitation of the industrial design, or when a third party is able to exert that influence over both persons.

Article 132.- The competent national authority may, either ex officio or at the request of a party and at any time, declare the registration of an industrial design null and void, when:

- a) the subject matter of the registration is not an industrial design according to the requirements established in article 113;
- b) the industrial design fails to comply with the requirements for protection set forth in article 115;
- c) the registration was granted for subject matter that is excluded from protection by the stipulations of article 116; or,
- d) there are grounds for declaring the registration null and void according to domestic legislation covering administrative acts.

Article 133.- The provisions stipulated in articles 17, 34, 53 paragraphs a), b), c) and d), 56, 57, 70, 74, 76, 77, 78, and 79 shall be applied in respect of industrial designs.

TITLE IV **ON TRADEMARKS**

CHAPTER I **ON REGISTRATION REQUIREMENTS**

Article 134.- For purposes of this system, any sign that is capable of distinguishing goods and services on the market shall constitute a trademark. Signs that are capable of graphic representation shall be eligible for registration as trademarks. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

The following signs, among others, shall be capable of constituting a trademark:

- a) words or a combination of words;
- b) pictures, figures, symbols, graphic elements, logotypes, monograms, portraits, labels, and emblems;

- c) sounds and smells;
- d) letters and numbers;
- e) a color demarcated to give it a specific shape, or a combination of colors;
- f) the shape of a product its packaging or wrappings;
- g) any combination of the signs or means indicated in the items above.

Article 135.- Signs may not be registered as trademarks when they:

- a) fail to constitute a trademark according to the requirements stated in the first paragraph of the previous article;
- b) are lacking in distinguishable characteristics;
- c) consist solely of the everyday shape of goods or their packaging, or of shapes or characteristics dictated by the nature or particular function of the product or service in question;
- d) consist exclusively of shapes or other elements that attribute a functional or technical advantage to the product or service to which they are applied;
- e) consist solely of a sign or statement that may serve in commerce to designate or describe, in respect of the goods or services for which they are to be used, their quality, quantity, purpose, value, geographical origin, or time of production, or that impart other details, characteristics, or information, including expressions of praise for those goods or services;
- f) consist exclusively of a sign or statement that is the common or technical name of the product or service concerned;
- g) consist solely of or have become a sign or statement which, in everyday language or normal use within the country, is the common or usual designation for the goods or services in question;
- h) consist of a color in isolation, without any demarcation to give it a specific shape;
- i) are liable to create confusion in business circles or the public, in particular as to the geographical origin, nature, manufacturing methods, characteristics, or qualities of the goods or services concerned, or their suitability for use;
- j) reproduce, imitate, or contain a protected indication of origin that is liable to create confusion or a mistaken association with the indication in relation to the goods themselves or different goods, or that involve taking unfair advantage of the well-known character of that appellation among the public;
- k) contain a protected appellation of origin for wines and spirits;
- l) consist of a national or foreign geographical reference that is liable to create confusion in respect of its application to products or services;

m) reproduce or imitate, as trademarks or elements of those trademarks, without the permission of the competent authority of the State or international organization concerned, heraldic elements, such as coats of arms, flags, and emblems, and the official signs and stamps used for the purposes of government control and guarantee and the coat of arms, flags and other emblems, initials or designations of any international organization;

n) reproduce or imitate signs denoting conformity with technical standards, except where the registration thereof is applied for by the national body responsible for standards and quality requirements in Member Countries;

o) reproduce, imitate, or include the indication of a plant species protected in a Member Country or any other country, where application of the sign to goods or services relating to that species of if its use is likely to cause confusion or a mistaken association with that variety; or

p) are contrary to law, morality, public order or good manners.

Notwithstanding the provisions stipulated under items b), e), f), g) y h), a sign may be registered as a trademark where its continued use in a Member Country by the applicant or assignor has endowed it with a distinctiveness in respect of the products or services to which it is applied.

Article 136.- Those signs the use of which in commerce may constitute an impediment to the rights of third parties, may likewise not be registered as trademarks, in particular where:

a) they are identical, or similar to a trademark filed for registration or registered earlier by a third party for the same goods or services, or for goods or services in respect of which use of the trademark is likely to lead to confusion or mistaken association;

b) they are identical or similar to a protected trade name, label, or emblem that, given the circumstances, their use would result in a likelihood of confusion or mistaken association;

c) they are identical or similar to a filed for or registered advertising slogan that, given the circumstances, their use would result in a likelihood of confusion or mistaken association;

d) they are identical or so similar to a distinctive sign belonging to a third party where, the applicant being or having been a representative or distributor of the owner of the protected sign in a Member Country or elsewhere or a person expressly authorized by that right holder, their use, given the circumstances, would result in a likelihood of confusion or mistaken association;

e) consist of a sign that is capable of affecting the identity or prestige of legal entities, whether non-profit or not, or natural persons other than the applicant or identifiable by the general public as being such a different person, particularly in regard to a given name, family name, signature, title, nickname, pseudonym, image, portrait, or caricature, where no consent has been obtained from that person or, if deceased, the declared heirs of that person;

f) consist of a sign that may violate the intellectual property right or copyright of a third party, unless the consent of that party has been obtained;

g) consist of the name of indigenous, African American, or local communities, or of such denominations, words, letters, characters, or signs as are used to distinguish their products, services or methods of processing, or that constitute an expression of their culture or practice, unless the application is filed by the community itself or with its express consent; and,

h) consist of a total or partial reproduction, imitation, translation, transliteration, or transcription of a well-known sign belonging to a third party without regard to the type of product or service to which it shall be applied, the use of which would lead to a likelihood of confusion or mistaken association with that party,; taking unfair advantage of the prestige of the sign; or weakening its distinctive force or its use for commercial or advertising purposes.

Article 137.- The competent national office may, when it has sufficient reason to believe that the registration was applied for in order to engage in, contribute to, or strengthen an act of unfair competition, may refuse to register that trademark.

CHAPTER II ON THE REGISTRATION PROCEDURE

Article 138.- The application for registration of a trademark shall be filed with the competent national office. It shall cover a single category of goods or services and shall meet the following requirements:

- a) the petition;
- b) a reproduction of the trademark where it is a denomination containing graphic elements, shape, or color, or a figurative, mixed or three-dimensional trademark with or without the use of color;
- c) such powers of attorney as may be needed;
- d) proof of payment of the prescribed fees;
- e) the authorizations required for the cases stipulated in articles 135 and 136, where applicable; and
- f) the certificate of registration in the country of origin issued by the granting authority and, if so stipulated in domestic legislation, the receipt for payment of the prescribed fee, should applicants wish to avail themselves of the right provided for in Article 6 quinquies of the Paris Convention.

Article 139.- The petition for registration of the trademark application shall be a form and shall include the following information:

- a) the request for registration of a trademark;
- b) the name and address of the applicant;
- c) the nationality or address of the applicant and, should the applicant be a legal entity, the place of incorporation;

- d) the name and address of the applicant's legal representative, if pertinent;
- e) a statement of the trademark to be registered, where such trademark is denominative only, without graphics, shape or color;
- f) a list of the specific goods or services for which the trademark registration application is being filed;
- g) a statement of the category to which the products or services correspond; and,
- h) the signature of the applicant or the applicant's legal representative.

Article 140.- The date of its receipt by the competent national office shall be considered the application filing date, provided that the application contained at least the following elements:

- a) a statement that the applicant is filing for registration of a trademark;
- b) data that shall permit identification of the applicant or person filing the application or enable the competent national office to communicate with that person;
- c) the trademark for which registration is being applied for, or a reproduction of the trademark in the case of trademarks that are denominations with special graphic elements, shapes or colors, or of figurative, mixed or three-dimensional trademarks, whether in color or not;
- d) a list of the specific goods or services in respect to which the trademark protection is being applied for; and,
- e) proof of payment of the prescribed fees.

Failure of to provide any of the requirements listed in this article shall cause the competent national office to reject the application for processing and no filing date shall be assigned to it.

Article 141.- An applicant may claim as the filing date of an application for registration of a trademark the date that the trademark was used to distinguish goods or services at an officially recognized exhibition held in any country when applied for within six months following the date on which the said goods or services were first exhibited under that trademark. In that case, the application may be considered filed as from the date of the exhibition.

The acts referred to in this article shall be certified by the competent authority responsible for the exhibition, which shall state the date on which the trademark was first used in connection with the goods or services in question.

Article 142.- An applicant wishing to invoke the right provided for in Article 6 quinquies of the Paris Convention for the Protection of Industrial Property shall submit the certificate of trademark registration in the country of origin within a period of three months after the application filing date.

Article 143.- Applicants for registration of a trademark may ask to modify their applications at any time during their processing or to correct any material mistakes.

The competent national office may, at any stage of the processing, suggest that applicants make changes in their applications. The said proposal of amendment shall be processed in accordance with the provisions of article 144.

In no case may the application be amended by making important changes in the trademark or adding to the products or services initially specified.

Fees may be prescribed for the amendment application, if domestic legislation so provides.

Article 144.- The competent national office shall, within 15 days following filing, conduct an examination to determine whether the application complies with the conditions of form specified in articles 135 and 136.

Should the examination reveal that the application does not comply with the conditions of form specified in the preceding paragraph, the competent national office shall request that the applicant to remedy those defects within a period of sixty days following notification.

If the applicant fails to fulfill the requirements by the end of the stipulated term, the application shall be rejected and shall lose its position within the order of priority.

Article 145.- If the application meets the formal conditions of form laid down in this Chapter, the competent national office shall order its publication.

Article 146.- Within thirty days following such publication, any person having a legitimate interest may, one time only, file a valid objection that could result in invalidation of the trademark registration.

The competent national office may, at the request of a party and once only, grant an additional thirty-day period in which to provide valid reasons for opposing registration of the trademark.

Reckless objections may be sanctioned if provided for by domestic legislation.

No objections based on such trademarks as may have existed at the same time as that being applied for, may be lodged against the application within six months following expiry of the grace period referred to in article 153.

Article 147.- For the purposes of the previous article, it shall be understood that both the owner of an identical or similar trademark, for goods or services in respect of which use of the other trademark would be likely to lead to confusion, and the person that first applied for registration of the trademark in any Member Country, have a legitimate interest in lodging objections in the other Member Countries. In either case, such opponents shall demonstrate real interest in operating in the market of the Member Country where they are filing an objection by applying for registration of the trademark at the moment they express their opposition.

If an objection is lodged on the basis of a trademark previously registered in any Member Country under the provisions of this article, the competent national office shall have the authority to deny registry of the second trademark.

The filing of an objection based on an application for trademark registration previously filed in any Member Country under the provisions of this article shall result in the suspension of

the registration of the second trademark until such time as the registration of the first has been conferred. In that event, the stipulations of the previous paragraph shall be applicable.

Article 148.- The competent national office shall, in the event of any opposition having been presented, request applicants to submit such arguments and evidence as they deem fit within thirty days following that notification.

The competent national office shall, at the request of one of the parties, grant for one time only a period of thirty additional days in which to provide valid reasons for the refutation.

Article 149.- The competent national office shall not accept for consideration such objections as:

- a) are lodged without an indication being given of the essential data identifying the opponent and the application against which the objection is being filed;
- b) are lodged after the deadlines have lapsed;
- c) have not paid the prescribed processing fees.

Article 150.- At the expiration of the period stipulated in article 148, or if no objections have been filed, the competent national office shall proceed to conduct the examination of registrability. Should any opposition have been presented, the competent national office shall rule on those objections and on the grant or refusal of registration of the trademark and inform the parties of its decision.

Article 151.- Member Countries shall use the International Classification of Goods and Services for the Purposes of the Registration of Marks established by the Nice Agreement of June 15, 197 and its effective amendments to classify the goods and products to which the trademarks shall be applied.

The categories of the International Classification named in the previous paragraph into which those goods and services are classified shall not be used to determine whether the expressly listed products or services are similar or different.

CHAPTER III ON THE RIGHTS AND LIMITATIONS CONFERRED BY THE TRADEMARK

Article 152.- Registration of a trademark shall be for a term of ten years counted from the grant date and may be renewed for successive ten-year periods.

Article 153.- The owner of a registered trademark or any party with a legitimate interest shall apply to the competent national office for its renewal within six months before expiry of its registration. Notwithstanding the foregoing stipulation, both the owner of the registered trademark and any party having a legitimate interest shall be given a grace period of six months following the date of expiration of the registration in which to apply for renewal. Such persons shall accordingly attach receipts for payment of the prescribed fees and shall, at the same time, pay any such surcharge as the domestic legislation of the Member Countries may prescribe. The registered trademark shall retain its full validity over that period.

Renewal shall not require proof of trademark use and shall be granted automatically on the same terms as the original registration. The owner of the registered trademark may, however, reduce or limit the goods or services listed in the original registration.

Article 154.- Registration of a trademark with the competent national office shall confer the exclusive right to its use.

Article 155.- The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from engaging in the following acts:

- a) using or affixing the trademark or a similar or identical distinguishing sign to products in respect of which the trademark is registered; to products connected with the services for which the trademark is registered; or to the packages, wrappings, packing, or outfittings of those products;
- b) removing or changing the trademark, once it has been placed on or affixed to the products in respect of which the trademark is registered, for commercial purposes; to products connected with the services for which it is registered; or to the packages, wrappings, packing, or outfitting of those products;
- c) manufacturing labels, packages, wrappings, packing, or such other materials as may reproduce or contain the trademark, and selling or storing such materials;
- d) using, in the course of trade, identical or similar signs to the trademark for goods or services, where such use would result in a likelihood of confusion or mistaken association with the registration owner. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed;
- e) using in the course of trade identical or similar signs to a well-known trademark with respect to any goods or services, where such use, by weakening the distinctive force or the value of that trademark for commercial or advertising purposes or by taking unfair advantage of the prestige of the trademark or of its owner, could unjustly damage the registration owner's economic or commercial interests;
- f) making public use of identical or similar signs to a well-known trademark, even for purposes that are non-commercial, where such use could weaken the distinctive force or value of that trademark for commercial or advertising purposes or take unfair advantage of its prestige.

Article 156.- For the purposes of the provisions stipulated under paragraphs e) and f) of the previous article, the following acts, among others, shall constitute use of a trademark by a third party in the course of trade:

- a) introducing into commerce, selling, offering for sale, or distributing products or services that bear the said trademark;
- b) importing, exporting, storing, or transporting products that bear the said trademark; or,
- c) using the said trademark, independently of the means of communication employed and without prejudice to such standards as may be applicable to advertising, in advertising, publications, commercial documents, or written or oral communication.

Article 157.- Provided that it is done in good faith and does not constitute use as a trademark, third parties may, without the consent of the owner of the registered trademark, make use in the market of their own names, addresses, or pseudonyms, a geographical name, or any other precise indication concerning the kind, quality, amount, purpose, value, place of origin or time of production of their goods or of the rendering of their services, or other characteristics thereof, provided that such use is confined to identification or information purposes only and is not likely to create confusion over the source of the goods or services.

Trademark registration shall not confer on the owner the right to prevent a third party, where proceeding in good faith, from using the trademark to announce, even in advertising using brand comparisons, offer for sale, or advertise the existence or availability of lawfully trademarked goods or services, or from advertising the compatibility or suitability of spare parts or accessories that may be used with goods bearing the registered trademark, provided that such use is confined to the purpose of informing the public and is unlikely to lead to confusion over the corporate origin or the goods or services concerned.

Article 158.- Trademark registration shall not confer on the owner the rights to prevent third parties from engaging in trade in a product protected by registration once the owner of the registered trademark or another party with the consent of or economic ties to that owner has introduced that product into the trade of any country, in particular where any such products, packaging or packing as may have been in direct contact with the product concerned have not undergone any change, alteration, or deterioration.

For the purposes of the preceding paragraph, two persons shall be considered to have economic ties when one of the persons is able to exercise a decisive influence over the other, either directly or indirectly, with respect to use of the trademark right or when a third party is able to exert that influence over both persons.

Article 159.- Where registrations of an identical or similar mark exist in the Subregion in the name of different owners for the identification of the same goods or services, the marketing of the goods or services identified with that mark in the territory of the Member Country concerned shall be prohibited, except where the owners of the said marks enter into agreements allowing such marketing.

In the event of such agreements having been entered into, the parties shall take the necessary precautions to avoid misleading the public as to the origin of the goods or services concerned, which shall include matters relating to the identification of the origin of the goods or services in question in appropriate and prominent characters for the proper information of the consuming public. The said agreements shall be registered with the competent national offices and shall conform to the standards governing business practices and the promotion of competition.

In any event, the importation of a product or service that is in the situation described in the first paragraph of this Article shall not be prohibited where the mark is not being used on the territory of the importing country, as provided in the first paragraph of Article 166, except where the owner of the said mark satisfies the competent national office that the non-use of the mark is justified by legitimate factors.

Article 160.- Where the trademark consists of a geographical name, the product may not be marketed without bearing visible and clearly legible identification of its place of manufacture.

CHAPTER IV ON THE LICENSING AND ASSIGNMENT OF TRADEMARKS

Article 161.- A trademark that is registered or for which registration has been filed shall may be assigned or to transfered by succession that trademark, with or without the business to which it belongs.

Any assignment or transfer of a trademark registration shall be filed with the competent national office. Failure to register shall render the assignment or transfer invalid with respect to third parties.

An assignment or transfer, in order to be registered, shall be in writing.

Any interested party may file for registration of an assignment or transfer. The competent national office may deny that registration, if the transfer is likely to cause confusion.

Article 162.- The owner of a trademark that is registered or being filed for may license one or more parties to use the trademark in question.

Any license that is granted for use of a trademark shall be registered with the competent national office. Failure to register shall render the license invalid with respect to third parties.

The license, in order to be registered, shall be made in writing.

Any interested party may request the registration of a license.

Article 163.- The competent national authority shall not register any trademark licensing agreements or assignments or transfers that do not conform to the provisions of the Common Regime for the Treatment of Foreign Capital and for Trademarks, Patents, Licenses, and Royalties, or that do not conform to Andean Community or domestic unitrust.

Article 164.- The owner of the registered trademark shall report to the competent national office, during the license's period of effectiveness, any change in the name or address of the registered trademark owner. Otherwise any notification that is made using the data entered in the registration.

CHAPTER V ON THE CANCELLATION OF REGISTRATION

Article 165.- The competent national office shall, at the request of an interested party, cancel a trademark registration after an uninterrupted period of non-use in any Member Country, without valid reasons, by the owner, a licensee, or another person authorized by the owner, of at least three years immediately before the start of the cancellation proceeding. Cancellation of a registration for non-use of trademark rights may also be requested as a defense in an opposition proceeding lodged on the basis of the unused trademark.

Without prejudice to the stipulation of the previous paragraph, no cancellation proceeding shall be intitnted until three years after the date of notification of the final resolution within the administrative registration procedures relating to the.....

Where non-use of a trademark affects only one or several of the goods or services in respect of which it was registered, an order shall be given to shorten or limit the list of products or services originally included in the trademark registration in order to remove those goods and services in respect of which the trademark has not been used; the identity or similarity of the goods or services shall be taken into consideration for this purpose.

Registration may not be cancelled where the owner of the trademark is able to show that non-use is due to force majeure or an Act of God, among other things.

Article 166.- A trademark shall be considered in use where the goods or services distinguished by it have been placed in circulation or are available on the market under that trademark, in the form and amounts that are normal, due account being taken of the nature of the goods or services and the methods used for their marketing.

A trademark shall also be considered in use if it distinguishes only goods that are intended for exportation from any of the Member Countries, as stipulated in the previent paragraph. .

Use of a trademark in a form different from that in which it was registered only with respect to details or features that do not alter its distinctive character shall not constitute grounds for cancellation of registration for non-use, or lessen the protection afforded to the trademark.

Article 167.- The burden of proof of trademark use shall rest with the owner of the registration.

Commercial invoices, accounting documents, or auditing certificates, that demonstrate the regular nature and amount of trade that exists in the goods identified by the trademark may be employed to prove trademark use, among others.

Article 168.- The person who obtains a favorable ruling shall have the preferential right to registration. This right may invoked at the filing time of the request for cancellation or within three months following the effective date of the decision that ended the administrative procedure for trademark cancellation.

Article 169.- Where the owner of the trademark has caused or allowed that trademark to become a common or generic sign to identify or denote one or several of the goods or services for which it was registered, the competent national office shall order, ex officio or at the request of a party, the cancellation of the trademark or the limitation of its scope.

A trademark shall be considered to have become a common or generic sign if, in commercial circles and for the public, it has lost its distinctive character as an indication of the corporate source of the product or service to which it is applied. In order for this to occur, the following elements shall exist in relation to the trademark:

- a) the need of competitors, given the absence of any other appropriate name or sign for designating or identifying in their trade the good or service in question, to use the sign to carry out their business activities;
- b) widespread use of the trademark by the general public and among commercial circles as the common or generic indication of the good or service in question; and

c) ignorance or limited knowledge by the public that the trademark denotes a specific corporate origin.

Article 170.- On receipt of petitions to cancel registrations, the competent national office shall request the owners of the trademarks in question to assert their arguments and submit the proof they deem fit within sixty working days counted from the date of notification.

At the expiration of the period stipulated in this article, the competent national office shall proceed to decide whether or not to cancel the trademark registration and shall inform the parties of its decision through a resolution.

CHAPTER VI ON THE RENUNCIATION OF REGISTRATION

Article 171.- Owners of a registration may at any time renounce their rights to the registration.

Where renunciation is partial, the cancellation of the registration shall relate only to those goods or services that the owner has renounced.

Renunciation shall not be permitted where there are encumbrances or real guaranty rights that are registered with the competent national office, unless the owners of those rights have given their express consent to such renunciation.

Renunciation of a trademark shall become effective only when registration of the renunciation with the competent national office has taken place.

CHAPTER VII ON THE INVALIDATION OF REGISTRATION

Article 172.- The competent national authority shall, either ex officio or at the request of a party, and at any time, declare the registration of a trademark absolutely null and void where it has been granted in contravention of the provisions of articles 134, paragraph one, and 135.

The competent national authority shall,, either ex officio or at the request of a party, declare the relative invalidation of a trademark registration where granted in contravention of the provisions of article 136 or obtained in bad faith. This action will lapse five years following the grant date of the contested registration.

The above-cited actions shall in no way affect such actions as may be brought for damages under domestic law.

A registered trademark may not be declared null and void on grounds that have ceased to be applicable at the time of the proceeding for invalidation.

When grounds for invalidation are applicable only to one or some of the goods or services for which the trademark was registered, invalidation shall be pronounced only in respect of those goods or services, and they shall be removed from the trademark registration.

Article 173.- The provisions of article 78 shall be applicable to this Chapter.

CHAPTER VIII ON THE LAPSING OF REGISTRATION

Article 174.- Registration of a trademark shall lapse by operation of law where the owner or the person having a legitimate interest does not request renewal within the legal time limit, including the period of grace, as provided for in this Decision.

Failure to pay fees under the terms stipulated by the domestic legislation of the Member Country shall likewise be grounds for lapse.

PART VII ON ADVERTISING SLOGANS

Article 175.- Member Countries may register advertising slogans as trademarks in conformity with the respective domestic legislation.

An advertising slogan is understood to mean the word, phrase, or caption used to complement a trademark.

Article 176.- The application for registration of an advertising slogan shall specify the filed for or registered trademark with which it shall be used.

Article 177.- Advertising slogans that contain references to similar products or trademarks to expressions that may be damaging to such products or trademarks may not be registered.

Article 178.- An advertising slogan shall be assigned or transferred together with its associated trademark and its validity shall be subject to that of the trademark.

Article 179.- The relevant provisions of the Title on Trademarks of this Decision shall be applicable to this Title

TITLE VIII ON COLLECTIVE TRADEMARKS

Article 180.- A collective trademark shall be understood to be any sign that serves to distinguish the origin or any other characteristic common to goods or services from different businesses that use the sign under the owner's control.

Article 181.- Legally established associations of producers, manufacturers, service providers, organizations, or groups of persons may apply for the registration of a collective trademark in order to distinguish in the market the goods or services of their members .

Article 182.- An application for registration shall specify that it is for a collective trademark, and shall be accompanied by:

a) a copy of the articles of association of the organization, association, or group of persons applying for registration of the collective trademark;

b) the membership list; and,

c) a statement of the conditions on and form in which the collective trademark shall be used in connection with the goods or services.

Once registration of the collective trademark has been obtained/granted, the association, organization, or group of persons shall inform the competent national office of any changes that may have been made in any of the documents referred to in this article.

Article 183.- The collective trademark may be assigned, transferred, or licensed in accordance with the internal bylaws of the association, organization, or group of persons.

These assignments, transfers, and licenses, in order to take effect in regard to third parties, shall be registered.

Article 184.- The relevant provisions of the Title on Trademarks of this Decision shall be applicable to this Title.

TITLE IX **ON CERTIFICATION MARKS**

Article 185.- A certification mark shall be understood to be any sign that is intended to be applied to goods or services, the quality or other characteristics of which have been certified by the owner of the mark.

Article 186.- A certification mark may be owned by a public or private business or institution; or a state, regional, or international organization.

Article 187.- An application for registration of a certification mark shall be accompanied by the regulations for use of the certification mark, stating which goods or services may be subject to certification by the owner of the mark, defining the characteristics guaranteed by the presence of the mark, and describing the control to which those characteristics shall be subjected before and after use of the certification mark.

The regulations for use of the certification mark shall be registered together with the mark.

The competent national office shall be informed of any change in the rules for use of the certification mark, which shall take effect in regard to third parties as of the date they are entered in the appropriate registry.

Article 188.- The owner of a certification mark may authorize its use by any person whose good or service complies with the conditions prescribed in the regulations for use of that mark.

The certification mark may not be used in connection with the goods or services produced, loaned, or marketed by the owner of that certification mark.

Article 189.- The relevant provisions of the Title on Trademarks of this Decision shall be applicable to this Title.

TITLE X **ON TRADE NAMES**

Article 190.- A trade name is understood to mean any sign that identifies an economic activity, a business, or a commercial establishment.

A business or establishment may have more than one trade name, including its firm name, corporate name, company name, or any other name that may be entered in the corporation registries or registries of commercial concerns.

Trade names exist independently of the company or firm names of juridical persons and it is possible for the two of them to exist at the same time.

Article 191.- Exclusive right to a trade name is acquired through use by a legal person for the first time in commercial activities and ends when the use of the name or activities of the business or establishment using that trade name cease to exist.

Article 192.- The owner of a trade name may prevent the use in commercial activity by third parties of an identical or similar distinctive sign, where such use would result in a likelihood of confusion or the risk of association of that sign with the owner or the products or services belonging to that owner; in the case of well-known trade names, where such use could produce unjust economic or commercial injury to the owner or involve taking unfair advantage of the prestige of the owner's name or business.

The provisions contained in articles 155, 156, 157, and 158 shall be applicable to trade names, as relevant.

Article 193.- The owner of a trade name may, in accordance with the domestic legislation of each Member Country, register or deposit the name with the competent national office. This registration or deposit shall be in the nature of a declaration only. Right to its exclusive use shall be acquired only as specified in article 191.

Article 194.- Signs that are included in the following cases are not eligible for registration as a trade name:

- a) when they consist totally or in part of a sign that is contrary to morality or public order;
- b) when their use is liable to create confusion in commercial circles or in the public as to the identity, nature, activities, line of business, or any other aspect of the company or establishment that is designated by that name;
- c) when their use is liable to cause confusion in commercial circles or in the public as to the corporate source, origin, or other characteristics of the goods or services produced or marketed by the company; or,
- d) where a prior application for or registration of the trade name already exists.

Article 195.- In order to register the trade name, the competent national office shall first make an examination to determine whether it contravenes the stipulations of the foregoing article. Member Countries may demand proof of its use as specified in their domestic legislation

The classification of goods and services used for the trademarks may be applicable to the registration of a trade name.

Article 196.- Registration of a trade name shall be for a term of ten years counted from the date of registration or deposit and may be renewed for successive ten-year periods.

Article 197.- The owner of a registered trade name may renounce the rights to that registration. Renunciation of the registration of a trade name shall come into effect only when that renunciation has been registered with the competent national office.

Article 198.- The owner of a trade name shall apply to the competent national office for its renewal within six months before expiry of its registration. Notwithstanding the foregoing stipulation, the owner of the trade name shall be allowed a grace period of six months following the date of expiration of the registration in which to apply for its renewal, at that time attaching receipts for payment of the fees prescribed in the domestic legislation of the Member Countries and paying any such surcharge as may be prescribed for. The registered trade name shall retain its full validity over that period.

For purposes of the renewal of a trade name, the competent national offices may demand proof of its use as specified in domestic legislation. In any case, the renewal shall be carried out on the same terms as the original registration.

Article 199.- The assignment of a registered or deposited trade name shall be registered with the competent national office in accordance with the procedure applicable to the assignment of trademarks, as relevant, for which the same fee shall be payable. Without prejudice to the foregoing, a trade name may only be assigned together with the business or establishment with which it is being used.

A trade name may be licensed. That license may be registered with the competent national office when so stipulated by domestic legislations.

TITLE XI **ON LABELS OR EMBLEMS**

Article 200.- The protection and deposit of labels or emblems shall be governed by the provisions in respect of trade names, in accordance with the domestic legislation of each Member Country.

TITLE XII **ON GEOGRAPHICAL INDICATIONS**

CHAPTER I **ON APPELLATIONS OF ORIGIN**

Article 201.- An appellation of origin shall be understood to be a geographical indication consisting of the name of a particular country, region, or locality, or of a name which, without being that of a particular country, region, or locality, refers to a specific geographical area, which name is used to identify a product originating therein, the qualities, reputation, or

characteristics of which are exclusively or essentially attributable to the geographical environment in which it is produced, including both natural and human factors.

Article 202.- Those appellations of origin may not be declared such that:

- a) do not conform to the definition contained in article 201;
- b) are common or generic terms that distinguish the product concerned, that is, terms considered as such both by persons with knowledge of the area concerned and by the general public;
- c) are contrary to good manners or the public order; or,
- d) are liable to mislead the public as to the geographical source, nature, means of manufacture, or quality, reputation, or other characteristics of the products in question.

Article 203.- The declaration of protection of an appellation of origin shall be made ex officio or at the request of persons who are able to prove a legitimate interest, such being natural persons or legal entities directly engaged in the extraction, production, or processing of the product or products to be covered by the geographical indication, as well as associations of producers. Where the appellations of origin refer to their own jurisdictions, state, departmental, provincial, or municipal authorities shall likewise be considered interested parties.

Article 204.- The application for a declaration of protection of an appellation of origin shall be filed in writing with the competent national office and shall specify the following:

- a) name, domicile, residence, and nationality of the applicant or applicants and proof of their legitimate interest;
- b) the appellation of origin in respect of which the declaration is filed;
- c) the demarcated geographical area within which the production, extraction, or processing of the product to be identified by the appellation of origin takes place;
- d) the products that are designated by the appellation of origin; and,
- e) a summary of the essential qualities, reputation, or other characteristics of the products that are designated by the appellation of origin.

Article 205.- Where the application has been accepted for consideration, the competent national office shall, within the following thirty days, ascertain whether it complies with the requirements stipulated in this Title and those established in the domestic legislation of the Member Countries, whereupon it shall observe the procedure for examining whether the trademark meets the conditions of form, insofar as pertinent.

Article 206.- The validity of the declaration of protection of an appellation of origin shall be subject to the continuing existence of the conditions on which it was based, as determined by the competent national office, which may declare the validity terminated if the said conditions no longer obtain. Nevertheless, interested parties may reapply for renewal of the said validity where they consider that the conditions on which protection was based have been restored,

without prejudice to administrative appeals provided for in the domestic legislation of each Member Country.

The declaration of protection of an appellation of origin may be amended at any time where there is a change in any one of the elements to which article 204 refers, such amendment to follow the stipulated procedure for the declaration of protection, insofar as it is applicable.

Article 207.- Authorization to use a protected appellation of origin may be requested for by those persons who:

- a) are directly engaged in the extraction, production, or processing of the products identified by the appellation of origin;
- b) perform the said activity within the demarcated geographical area specified in the declaration of protection; and,
- c) comply with other requirements imposed by the competent national offices.

Article 208.- Competent national offices may grant authorizations to use the said geographical indications. Such authorization may also be accorded by the public or private institutions that represent those benefited by the appellations of origin, if permitted by domestic provisions.

Article 209.- Where the competent national office is responsible for authorization to use an appellation of origin, it shall be granted or denied within a period of fifteen days following the filing date of the application.

Article 210.- Authorization to use a protected appellation of origin shall be for a term of ten years and may be renewed for successive ten-year periods, in accordance with the procedure stipulated in this Decision for the renewal of trademarks.

Article 211.- Authorization to use a protected appellation of origin shall lapse if its renewal is not applied for within the period stipulated in this Decision for the renewal of trademarks.

Failure to pay fees shall likewise be grounds for lapse, under the conditions specified in the domestic legislation of each Member Country.

Article 212.- The use of appellations of origin with respect to natural, agricultural, handicraft, or industrial products from the Member Countries shall be reserved exclusively for producers, manufacturers, and craftsmen with production or manufacturing establishments in the locality or region within the Member Country identified or evoked by that appellation.

Only producers, manufacturers, or craftsmen authorized to use a registered appellation of origin may employ together with that appellation the term "APPELLATION OF ORIGIN."

The provisions stipulated in articles 155, 156, 157, and 158 shall be applied in respect of protected appellations of origin, as relevant.

Article 213.- Public or private institutions representing parties benefited by appellations of origin or such parties as are so designated, shall possess the mechanisms allowing for effective control to be exercised over the use of protected appellations of origin.

Article 214.- The competent national office with its announcement shall start the period of protection of an appellation of origin.

Use by unauthorized persons of appellations of origin, including cases where such use is accompanied by indications of gender, type, imitation and other similar indications, in such manner as is likely to cause confusion among consumers, shall be considered an infringement of that intellectual property right and as such, sanctionable by punishment.

Article 215.- Member Countries shall prevent use of a geographical indication identifying wines or spirits for goods of this kind not originating in the place indicated by the appellation of origin in question, even where the true origin of the goods is indicated or the appellation of origin is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation," or the like.

Member Countries may not prevent continued and similar use of a particular appellation of origin of another country identifying wines and spirits in connection with goods or services by any of their nationals who have used that geographical indication in a continuous manner with regard to the same or related goods or services within the territory of the respective Member Country for at least 10 years preceding April 15, 1994 or, in good faith, preceding that date.

Article 216.- The competent national authority shall, either ex officio or at the petition of one of the parties, declare the authorization to use a protected appellation of origin null and void if granted in violation of this Decision. The provisions stipulated in this Decision in respect of trademark invalidation shall be applicable in this case, as relevant.

Article 217.- The competent national office shall, either ex officio or at the request of one of the parties, where use not in keeping with the provisions of the respective declaration of protection is proven, cancel the authorization for use of the appellation of origin. The relevant provisions stipulated in this Decision with regard to trademark cancellation shall be applicable in this case.

Article 218.- Competent national offices shall, where the petition is made by producers, extractors, manufacturers, or craftsmen with a legitimate interest in the matter or the respective public authorities, recognize appellations of origin protected in another Member Country.

Appellations of origin, in order to be eligible for such protection, must have been declared as such in their countries of origin.

Article 219.- Competent national offices shall recognize the protection accorded by third countries to appellations of origin or geographic indications, provided that an agreement to which the Member Country in question is a part so specifies. To be eligible for such protection, those appellations of origin must have been declared as protected in their countries of origin.

Article 220.- Appellations of origin protected in accordance with the stipulations of this Decision shall not, so long as that protection obtains, be considered common or generic in distinguishing the product they indicate.

CHAPTER II ON INDICATIONS OF ORIGIN

Article 221.- An indication of origin shall be understood to be a name, expression, image, or sign that indicates or evokes a particular country, region, locality, or place.

Article 222.- An indication of origin may not be used in the course of trade for a good or service where that indication is false or misleading or where its use is likely to cause confusion in the public as to the origin, source, quality, or any other characteristic of the good or service in question.

For purposes of the stipulation of the previous paragraph, its use in advertising or in any commercial documents concerning the sale, exhibition, or offering of goods and services also constitutes use of a geographical indication.

Article 223.- Persons may state their names and domiciles on the goods they market, even if those products come from another country, provided that the country or place where those goods are manufactured or produced is specifically and clearly stated also, together with any other indications that may be needed to avoid mistaking their true origin.

TITLE XIII ON WELL-KNOWN DISTINCTIVE SIGNS

Article 224.- A well-known distinctive sign is understood to mean a sign that is recognized as such in any Member Country by the pertinent sector, independently of the way or means by which it was made known.

Article 225.- A well-known distinctive sign shall be protected from use or registration that is not authorized pursuant to the stipulations of this Title, without prejudice to such other provisions of this Decision as may be applicable and to the provisions of the Member Country in respect of protection against unfair competition.

Article 226.- Use of all or a part of a well-known distinctive sign or the reproduction, imitation, translation, or transliteration thereof, that may create confusion in respect of identical or similar businesses, activities, products or services to those to which it is applied, shall constitute unauthorized use of that distinctive sign.

Also constituting unauthorized use of a well-known distinctive sign is the use of all or of a essential part of that sign, or the reproduction, imitation, translation, or transliteration thereof, even if in respect of businesses, activities, goods, or services other than those to which that well-known distinctive sign is applied, or its use for non-commercial purposes, where such use could be liable to produce any of the following effects:

- a) the risk of confusion or of association with the owner of the sign, or with the businesses, activities, goods, or services belonging to that owner;
- b) unjust economic or commercial injury to the owner of the sign by reason of the weakening of the distinctive force or commercial or advertising value of that sign; or,
- c) unfair exploitation of the sign's prestige or fame.

Use of a distinctive sign may be verified by any means of communication, including electronic media.

Article 227.- The provisions contained in articles 136 h) and 155 e) and f) shall be applicable to this Title.

Article 228.- In order to determine whether a distinctive sign is well-known, due account shall be taken of the following criteria among a thing :

- a) the extent to which it is known in the relevant sector of the public in any Member Country;
- b) the age of the distinctive sign and the size of the geographical area where it is used in and outside any Member Country;
- c) the age and the size of the geographical area where the distinctive sign is promoted, in or outside any Member Country, including its advertising and presentation at fairs, exhibitions, or other events in connection with the goods or services, the establishment, or the activity to which it is applied;
- d) the value of all investments made in promoting the distinctive sign or the establishment, activity, goods or services to which it is applied;
- e) figures for the sales and income of the owner, both at the international level and in the Member Country where protection is being sought, in respect of the distinctive sign whose well-known character is alleged;
- f) the extent of the inherent or acquired distinctiveness of the sign;
- g) the book value of the sign as a corporate asset;
- h) the volume of orders from persons interested in obtaining a franchise or license to the sign in a specific territory; or,
- i) the existence of significant manufacturing, purchasing, or storage activities by the owner of the sign in the Member Country where protection is being sought;
- j) the international trade-related aspects; or,
- k) the existence or age of any registration or application for registration of the distinctive sign in the Member Country concerned or in any other country.

Article 229.- The well-known nature of a sign shall not be denied solely because:

- a) it is not registered or in the process of being registered in the Member Country concerned or in any other country;
- b) it has not been nor is it being used to distinguish goods or services or to identify activities or businesses in the Member Country concerned; or,
- c) it is not well-known abroad.

Article 230.- The following, among others, shall be considered pertinent sectors of reference for purposes of determining whether a sign is well-known:

- a) the real or potential consumers of the type of goods and services to which the sign shall be applies;
- b) the persons involved in the channels of distribution or marketing of the kinds of goods or services to which the sign shall be applied; or,
- c) the commercial circles operating in lines of business connected with the kind of establishment, activity, goods, or services to which the sign applies.

It shall be sufficient, for the purpose of recognizing the well-known character of a sign, for it to be known within any of the sectors referred in the previous paragraphs.

Article 231.- The owner of a well-known distinctive sign may take action to prevent its use by third parties and may bring such action and take such measures as may be appropriate with the competent national authority. That owner may also prevent a third party from engaging in such acts in respect of the sign as are stipulated in article 155, the limitations established in articles 157 and 158 being applicable.

Article 232.- The right to action against unauthorized use of a well-known distinctive sign shall lapse five years counted from the date on which the owner was informed of that use, except where such use was started in bad faith, in which case that right to action shall not lapse. Such action shall not affect any action for damages that may be brought pursuant to domestic law.

Article 233.- The competent national authority shall, at the request of the owner or lawful right holder in respect of a well-known distinctive sign, where the said sign has been unlawfully registered by an unauthorized third party in a Member Country as part of a dominion name or electronic mailing address, order the cancellation or amendment of that registration of dominion or electronic mailing address, provided that use of that name or address is likely to have one of the effects cited in the first and second paragraphs of article 226.

Article 234.- A competent national authority shall, in making a decision on an action for unauthorized use of a well-known distinctive sign, bear in mind the good or bath faith displayed by the parties in the adoption and use of that sign.

Article 235.- Without prejudice to any action that may be taken in regard to the grounds for cancellation stipulated in articles 165 and 169, if permitted by domestic legislation, a competent national office shall cancel the registration of a trademark at the petition of the legitimate owner of that trademark where it is identical or similar to one that was well-known, according to the legislation in force, at the time registration was applied for.

Article 236.- The pertinent provisions contained in this Decision shall be applicable to this Part.

PART XIV **ON THE RIGHT OF ACTION FOR REVINDICATION**

Article 237.- Where patents or registration of industrial designs have been applied for or obtained by persons with no right to those patents or registrations, or in detriment of other parties also possessing that right, the parties affected may claim those rights from the

competent national authority and request the transfer to them of the applications being processed or the right grants, or their recognition as coapplicants or coowners of those rights.

Where trademark registrations have been filed for or obtained to the detriment of other parties with the same rights, the parties affected may make claims to such rights with the competent national authority by requesting their recognition as coapplicants or coowners of the rights in question.

Should the domestic legislation of the Member Country so permit, compensation for damages may be requested in the same claim.

The right to bring this action shall lapse four years after the protected of the subject matter or two years as from the date of first exploitation or use in the country by the person having obtained that right of the subject matter of the protection, whichever period expires first, except where the right was obtained in bad faith, in which case the right to bring that claim shall not lapse.

TITLE XV **ON ACTIONS FOR INFRINGEMENT OF RIGHTS**

CHAPTER I **ON THE RIGHTS OF THE OWNER**

Article 238.- Owners of a right protected by virtue of this Decision may bring action with the competent national authority against any persons infringing upon their right and also against any persons performing acts that are extremely likely to result in the infringement of that right.

The competent national authority may, ex officio and if permitted by the domestic law of the Member Country concerned, initiate the proceedings for infringement stipulated in that legislation.

In case of the coownership of a right, any one of the coowners may bring action for infringement without need for consent from the other parties, unless there is an agreement to the contrary among the coowners.

Article 239.- The owner of a patent shall have the right to take legal action for damages resulting from unauthorized use of the invention or utility model between the period when it became public knowledge and the respective application was opened to consultation and the patent grant date. Compensation shall be lawful only in respect of the subject matter covered by the patent grant, and shall be computed in accordance with the patent's effective exploitation by the defendant over the period in question.

Article 240.- In cases where infringement of a patent on a process for obtaining a product is claimed, defendants shall be liable to prove a difference between the procedure they use to obtain the product and the procedure protected by the patent whose infringement is claimed. Any identical product produced without the consent of the patent owner shall be presumed, on these regards and unless otherwise proven, to have been obtained through the patented process, if:

- a) the product obtained by means of the patented process is a new product; or
- b) there is a strong likelihood that the identical product was manufactured through the patented process and the patent owner is unable, despite reasonable efforts, to determine the process effectively used.

Consideration shall be given, in the presentation of evidence to the contrary, to the legitimate interests of the defendant insofar as the protection of their business secrets is concerned.

Article 241.- The plaintiff or defendant may request the competent national authority to order one or more of the following measures, among others:

- a) cessation of all acts that constitute the infringement;
- b) compensation for damages;
- c) withdrawal from commercial channels of all products resulting from the infringement, including packaging, wrappings, labels, printed materials or advertising, together with the materials and implements, the predominant use of which has been the commission of the infringement;
- d) prohibition against the importation or exportation of the products, or materials or implements referred to in the previous item;
- e) adjudication of the ownership of the products or materials or implements referred to in item c), in which case the value of such goods shall be charged to the amount of compensation due for damages;
- f) adoption of the necessary measures to avoid continuation or repetition of the infringement, including destruction of the products or materials or implements referred to in item c) or the temporary or definitive closure of the business belonging to the defendant or the accused; or,
- g) publication of the guilty verdict and notification of interested parties at the infringer's expense.

In the case of counterfeit trademark goods, the elimination or removal of that trademark shall be accompanied by actions to prevent the introduction of these products into commerce. Furthermore, such goods shall not be allowed to be re-exported in an unaltered state or to be subjected to a different customs procedure.

Cases duly qualified by the competent national authority or those expressly authorized by the owner of the trademark shall be excepted.

Article 242.- Member Countries may, unless out of proportion to the seriousness of the infringement, instruct judicial authorities to order infringers to tell right holders the names of third parties having taken part in the production and distribution of the infringing goods or services, and about the channels used for distribution of such goods.

Article 243.- The following criteria shall be used, among others, to calculate the amount of compensation to be paid for damages:

- a) the consequential damage and lost profits suffered by the right holder as a result of the infringement;
- b) the amount of profit obtained by the infringer as a result of the acts of infringement; or,
- c) based on the commercial value of the infringed right and such contractual licenses as may have already been granted, the price the infringer would have paid for a contractual license.

Article 244.- The right to action for infringement shall lapse two years counted as of the date the owner learned about the infraction or, in any case, five years after the infringement was committed for the last time.

CHAPTER II ON PROVISIONAL MEASURES

Article 245.- Any party initiating or who shall initiate an action for infringement may request the competent national authority to order immediate provisional measures for the purpose of preventing an infringement from occurring, avoiding its consequences, obtaining or preserving evidence, or ensuring the effectiveness of the action or compensation for damages.

Provisional measures may be requested before starting the action, together with it, or after it has been initiated.

Article 246.- The following provisional measures may be ordered, among others:

- a) immediate cessation of all acts constituting the alleged infringement;
- b) withdrawal from commercial channels of all products resulting from the alleged infringement, including packaging, wrappings, labels, printed material or advertising, or other materials, together with the materials and implements the predominant use of which has been the commission of the infringement;
- c) suspension of the importation or exportation of the goods or materials or implements referred to under the previous paragraph;
- d) establishment by the alleged infringer of an adequate guarantee; and,
- e) temporary closure of the business belonging to the defendant or accused, if necessary, to avoid continuation or repetition of the alleged infringement.

The competent national authority may, if permitted by the domestic law of the Member Country concerned, order the application of provisional measures *ex officio*.

Article 247.- A provisional measure shall be ordered only where the persons requesting it accredit their lawful right to act and the existence of the infringed right, and provide evidence allowing for a reasonable presumption of infringement or that infringement is imminent. The competent national authority may require persons requesting the measure to post a bond or sufficient equivalent assurance before ordering such a measure.

The applicant for a provisional measure in respect of particular goods shall supply the necessary information and a sufficiently detailed and precise description so that the allegedly infringing goods can be identified

Article 248.- Where a provisional measure has been adopted *inaudita altera parte*, the party affected shall be given notice without delay after the execution of the measures. The defendant may request the competent national authority to conduct a review of the executed measure.

Unless stipulated otherwise, any provisional measure executed *inaudita altera parte* shall cease to have effect by operation of law if infringement proceedings are not initiated within ten days following the execution of the measure.

The competent national authority may modify, revoke, or confirm the provisional measure.

Article 249.- Provisional measures shall be applied to the goods resulting from the alleged infringement and to the materials or implements, the predominant use of which has been the commission of the infringement.

CHAPTER III ON BORDER MEASURES

Article 250.- The owner of a registered trademark who has valid grounds for suspecting that the importation or exportation of counterfeit trademark goods will take place, may request the competent national authority to suspend this customs operation. The conditions and hand stipulated in the domestic legislation of the Member Country concerned shall be applicable to this request and to such an order as that authority may issue.

The party requesting measures to be taken at the border shall be required to supply the necessary information and a sufficiently detailed and precise description of the goods subject to the alleged infringement so they can be identified.

The competent national authority may, if permitted by the domestic laws of the Member Country, order the application of measures at the border *ex officio*.

Article 251.- The competent national authority shall give trademark owners the opportunity to participate in the inspection of the detained goods in order to substantiate their claims. The importer or exporter of those goods shall be entitled to exercise the same right.

The competent national authority shall make all necessary arrangements for confidential information to be protected during the inspection procedure.

Article 252.- Upon fulfillment of the applicable conditions and hand provisions, the competent national authority shall order deny the suspension of the customs operation and shall inform the applicant accordingly.

In the event that the authority orders the operation to be suspended, the notification of the applicant shall include the name and address of the consigner, importer, exporter, and consignee of the goods concerned, and the amount of goods to be detained. The importer or exporter of those goods shall be likewise notified of the suspension.

Article 253.- If, within ten working days after the applicant has been served notice of the suspension of the customs operation, the plaintiff fails to initiate infringement proceedings or the competent national authority has not taken measures to prolong the suspension, the measure shall be revoked and the detained goods shall be released.

Article 254.- If infringement proceedings have been initiated, the defendant may appeal to the competent national authority, which shall decide whether to modify, revoke, or confirm the suspension.

Article 255.- Once the existence of an infringement has been determined, such counterfeit trademark goods as the competent national authority may have seized may not be re-exported in an unaltered state or subjected to a different customs procedure, except in cases duly qualified by the competent national authority or expressly authorized by the right holder.

Without prejudice to other rights of action available to the right holder and subject to the right of the defendant to seek review by a judicial authority, the competent national authorities shall have the authority to order the destruction or seizure of infringing goods.

Article 256.- Small quantities of goods of a non-commercial nature contained in traveler's luggage or sent in small consignments shall be excluded from the application of the provisions of this chapter.

CHAPTER IV ON CRIMINAL PROCEDURES

Article 257.- Member Countries shall provide for criminal procedures and penalties to be applied in cases of trademark counterfeiting.

TITLE XVI **ON INTELLECTUAL PROPERTY-LINKED TRADE PRACTICES**

CHAPTER I ON ACTS OF UNFAIR TRADE PRACTICES

Article 258.- Any act carried out in respect of intellectual property in the course of trade that is contrary to honest commercial practices shall be considered unfair.

Article 259.- The following, among others, constitute intellectual property-linked unfair trade practices:

- a) any act which, by any means whatsoever, is capable of causing confusion with respect to the business, goods, or industrial activity of a competitor;
- b) false affirmations made in the course of trade that are capable of discrediting a competitor's business, goods, or industrial or commercial activity; or,

c) indications or affirmations whose use in the course of trade may mislead the public with regard to the nature, method of manufacture, characteristics, usefulness, or quantity of the goods in question.

CHAPTER II ON INDUSTRIAL SECRETS

Article 260.- An industrial secret shall be considered to be any undisclosed information within the lawful control of an individual person or legal entity that may be used for any productive, industrial, or commercial activity and that is capable of being transmitted to a third party, so long as that information:

a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

b) has commercial value because it is secret; and

c) has been the subject of reasonable steps by the person lawfully in control of the information, to keep it secret.

The information constituting an industrial secret may be related to the nature, characteristics, or purpose of the products, production methods or processes, or the means or forms of distribution or marketing of goods or rendering of services.

Article 261.- For purposes of this Decision, information whose disclosure is the result of a legal provision or court order shall not be considered an industrial secret.

Information provided to any authority or disclosed by legal provision by the person in lawful possession of it shall not be considered public property if that person supplies the information for the purpose of obtaining licenses, permits, authorizations, registrations, or any other legal acts.

Article 262.- Persons shall have the possibility of preventing an industrial secret lawfully within their control from being disclosed to, acquired by, or used by third parties in a manner contrary to fair trade practices. Performance of any of the following acts in respect of an industrial secret shall be considered unfair competition:

a) using, without the authorization of the person lawfully in control of that information, an industrial secret to which the third party had access under a confidentiality obligation resulting from a contractual or labor trade practice;

b) communicating or disclosing, without the consent of the personal lawfully in control of that information, the industrial secret referred in subsection a) with the intent of obtaining advantages for oneself or another party or of causing injury to the person in control of that information;

c) acquiring an industrial secret by means that are unlawful or contrary to fair practice practices;

d) using, communicating, or disclosing an industrial secret acquired in the way described in subsection c);

e) using an industrial secret obtained from another person, while knowing, or negligently failing to know, that the party who communicated the secret had acquired it by use of the means cited under subsection c), or did not have consent to communicate it from the person lawfully in control of that information;

f) communicating or disclosing an industrial secret obtained in the way described under subsection e), for the benefit of oneself or a third party or to injure the person lawfully in control of that industrial secret.

An industrial secret shall be considered to have been acquired by means contrary to fair trade practices where such acquisition is the result of industrial espionage, breach of contract or other obligations, breach of trust, breach of a duty of secrecy, or inducement to breach.

Article 263.- Protection of an industrial secret shall last so long as the conditions set out in article 260 exist

Article 264.- Any person lawfully in control of a trade secret may transfer it to a third party or authorize its use by a third party. That authorized user shall be under the obligation not to disclose the industrial secret by any means, unless otherwise agreed with the person having transferred or authorized use of that secret.

Agreements for the transfer of technological know-how, technical assistance, or the provision of basic or detailed engineering may include confidentiality clauses to protect the trade secrets contained therein, provided that such clauses are not contrary to antitrust provisions on free competition.

Article 265.- Persons with access to an industrial secret by reason of their work, employment, job, professional performance, or business relationship and warned of the confidentiality thereof, shall refrain from making use of it or disclosing it without just cause and without the consent of the owner or authorized user of that secret.

Article 266.- Member Countries, when requiring, as a condition for approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Member Countries shall protect such data against disclosure, except where necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

Member Countries may take steps to guarantee the protection provided for under this article.

CHAPTER III ON THE RIGHTS OF ACTION FOR UNFAIR COMPETITION

Article 267.- Without prejudice to any other right of action, parties interested may request the competent national authority to rule on the lawfulness of any commercial act or practice pursuant to the stipulations set out under this Title.

Article 268.- The right of action for unfair competition pursuant to this Title shall lapse two years following the last practice of the unfair act, unless domestic law stipulates a different time-limit.

Article 269.- The competent national authority may initiate ex officio the proceedings for unfair competition provided for in the legislation of the Member Country concerned, if that legislation allows for it.

FINAL PROVISIONS

Article 270.- The Member Countries, with the support of the General Secretariat, shall set up an Andean information system on the intellectual property rights registered in each of those countries and to that end, shall interconnect their respective databases by December 31, 2002 at the latest.

Article 271.- The Member Countries shall undertake the establishment of mechanisms for disseminating and disclosing the technological know-how contained in investment patents.
Article 272.- The Member Countries shall seek to sign cooperation agreements designed to strengthen the institutional capacity of the competent national offices.

Article 273.- For the purposes of this Decision, a Competent National Office shall be understood to mean the administrative body responsible for the registration of Intellectual Property.

The Competent National Authority, likewise, shall be understood to mean the body designated for that purpose by national legislation on the subject. Article 274.- This Decision shall take effect on December 1, 2000.

COMPLEMENTARY PROVISIONS

Article 275.- In accordance with the third complementary provision of Decision 391, the competent national authority on matters of access to genetic resources and the competent national offices shall set up systems to exchange information on authorized contracts for access and intellectual property rights granted by December 31, 2001 at the latest.

Article 276.- Intellectual Property matters not covered by this Decision shall be regulated by the domestic legislation of the Member Countries.

Article 277.- The competent national offices may establish such fees as they deem necessary for the handling of the procedures referred to in this Decision.

Once the formalities have been initiated with the competent national offices in question, the fees shall not be refunded.

Article 278.- With a view to the consolidation of a system of community administration, the Member Countries undertake to ensure the best implementation of the provisions contained in this Decision. They likewise commit themselves to strengthen, promote the autonomy of, and

modernize the competent national offices and the state-of-the-art information systems and services related to the state of the art

The competent national offices shall send their respective intellectual property gazettes or bulletins to the competent national offices of the other Member Countries as soon as possible following the publication thereof, by any means whatsoever. These gazettes or bulletins shall be made available to the public for consultation at the receiving office.

Article 279.- The Member Countries may sign cooperation agreements on intellectual property, such as the Patent Cooperation Treaty, provided that said agreements do not contravene the provisions of this Decision.

Article 280.- If the domestic law of the Member Countries so orders, parties applying for a patent on a genetically modified organism (GMO) and/or the technological process by which a GMO is produced, shall also be requested to present a copy of the document issued by the competent national authority on biosafety in each Member Country, granting them permission to produce such a body.

TRANSITIONAL PROVISIONS

FIRST.- Any intellectual property right validly conferred under Andean Community legislation existing prior to the entry into force of this Decision shall be governed by the provisions that were applicable on the grant date, except in regard to the terms of validity, in which case preexisting intellectual property rights shall be adjusted to the provisions stipulated in this Decision.

The provisions contained in this Decision shall be applicable with respect to use and exercise, obligations, licensing, renewal, and extensions.

In the case of applications being processed, this Decision shall be applicable to such stages as have not yet been completed on the date of its entry into effect.

SECOND.- Microorganisms shall be patentable until other measures are adopted as a result of the examination provided for in TRIPS article 27 3b).

The commitments assumed by the Member Countries under the Convention on Biological Diversity shall be borne in mind in this regard.

THIRD.- The competent national offices shall, as stipulated in article 278, interconnect their databases by December 31, 2002, at the latest. The General Secretariat shall apply for international technical and financial resources for this purpose.

Signed in the city of Lima, Peru on the fourteenth of September of two thousand.

[End of Annex IV
and of document]