

Original: Spanish – English

FTAA – NEGOTIATING GROUP ON INTELLECTUAL PROPERTY RIGHTS

DOCUMENT FROM THE CHAIR

CONSOLIDATION OF DRAFT TEXTS FOR THE CHAPTER ON INTELLECTUAL PROPERTY RIGHTS¹

II. INTELLECTUAL PROPERTY RIGHTS

7.) RELATIONSHIP BETWEEN THE PROTECTION OF TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY, AS WELL AS RELATIONSHIP BETWEEN ACCESS TO GENETIC RESOURCES AND INTELLECTUAL PROPERTY

[Article 1. Relationship between the protection of traditional knowledge and intellectual property, as well as the relationship between access to genetic resources and intellectual property]CAND,MER

[1.1. Parties shall ensure that the protection granted to intellectual property elements shall be accorded while safeguarding and respecting their biological and genetic heritage, as well as the traditional knowledge of their indigenous, afroamerican, or local communities.]CAND

[1.2. The relationship between the protection of traditional knowledge and intellectual property as well as the relationship between access to genetic resources and intellectual property shall be based on the provisions of the Convention on Biological Diversity, without prejudice to subscribing to consensus which may be reached in the different international fora in which the subject matter is addressed and the provisions of national laws on the subject.]MER

[1.3. Parties shall grant protection to the genetic resources and traditional knowledge, jointly or separately, by means of [a]CAND [an effective]MER² *sui generis* system, guaranteeing [at least]MER a fair and equitable remuneration [for the benefits derived from access to such resources or the use of such knowledge.]CAND [for the use by third parties.]MER]CAND,MER

[1.4. Nevertheless, in recognition of the sovereign rights of States over their natural resources and traditional knowledge, the power to regulate access to such genetic resources and traditional knowledge is vested in national governments under national law.]MER

[1.5. The granting of patents on inventions that have been developed on the basis of material obtained from the biological and genetic heritage, or from the traditional knowledge of indigenous, afroamerican, or local communities of the Parties, shall be subject to the acquisition of that material in accordance with international, regional, subregional and national law.]CAND

¹ ANDEAN COMMUNITY (CAND); CANADA (CD); CARICOM (CARD); CHILE (CHI); DOMINICAN REPUBLIC (DOM); GUATEMALA (GUA); HONDURAS (HON); MERCOSUR (MER); MEXICO (MX); NICARAGUA (NIC); PANAMA (PAN); UNITED STATES (US).

² Differences in brackets with Spanish version due to grammar.

[1.6. Parties recognize the right and the authority of indigenous, afroamerican, and local communities in respect of their collective knowledge.]**CAND**

[Article 1. Relationship Between the Protection of Traditional Knowledge and Intellectual Property

1.1. Each Party shall protect the collective intellectual property and traditional knowledge rights of indigenous peoples to their creations, when these can be used for commercial purposes, through a special system for registration, promotion and marketing of their rights, in order to highlight the social and cultural values of indigenous peoples and local communities and treat them equitably.

1.2. Each Party shall recognize that the customs, traditions, beliefs, spirituality, religiosity, vision of the cosmos, expressions of folklore, artistic expressions, traditional knowledge and any other form of traditional expression of indigenous peoples and local communities are part of their cultural patrimony.

1.3. Cultural patrimony may not be subject to any form of exclusivity on the part of third parties not authorized through the intellectual property rights system, unless application is made by the indigenous peoples and local communities or by third parties authorized by them.

1.4. Each Party shall provide that any fixation, representation, publication, communication or use in any form of expressions of folklore or traditional knowledge will mention the community and indigenous people associated therewith.

Article 2. Relationship Between Access to Genetic Resources and Intellectual Property

2.1. Each Party shall protect access to its genetic resources, and traditional knowledge developed by indigenous peoples and local communities on the use of biological resources contained in such genetic resources, against the indiscriminate use of biological diversity, as well as ensuring that the country will participate in benefits derived from the use of its genetic resources.

2.2. Each Party shall provide for just and equitable participation in the benefits deriving from access to its genetic resources and from use of traditional knowledge and expressions of folklore.

2.3. Each Party shall ensure that the protection given to industrial property is granted to safeguard its biological and genetic patrimony. For such purpose, the granting of patents on inventions developed based on material obtained from such traditional knowledge or patrimony shall be subject to such material having been acquired pursuant to national and international law.]**PAN**

8.) UTILITY MODELS

Article 1. [Utility Models]CAND,HON,MER,MX

[1.1 It shall be considered as utility model 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 previously have.] **HON**

[insofar as they effect a functional improvement to its use or manufacture and industrially applicable.]**CAND,MER]CAND,HON,MER**

[1.1 Each Party shall protect utility models, these being understood as objects, utensils, machines and tools which, as a result of a change in their assembly, configuration, structure or form, perform a different function with respect to the parts which compose them or the advantages of their utility] **MX**

[1.2 Utility models shall be protected by patents [or utility model certificates]**MER.]CAND,HON,MER**

[1.3. The provisions on patents for inventions included in this Agreement shall be applicable to utility models when relevant.]**CAND,MER**

Article 2. [Term of Protection]HON,GUA

[2.1. The term of protection of the utility model shall be [,at least,]**MER** ten years, counted from the filing date of the application [in the Party concerned]**CAND]CAND,MER**

[2.1. The protection conferred by a utility model patent shall begin from the date of filing, and, when granted, it shall expire fifteen (15) years after that date.]**HON**

[2.1. Each Party shall protect utility models in accordance with their legislation, for a period of at least 10 years, counted from the filing date.]**GUA**

[2.1. The registration of utility models shall be in force for a non-renewable period of 10 years]**MX**

Artículo 3. [Exceptions]HON

[3.1. The following shall not be considered utility models: sculptures, architectural works, or objects that are purely aesthetic in nature.]**CAND**

[3.2. The following may not be granted a utility model patent or certificate:]**CAND,HON,MER**

[a. Procedures;]**CAND,HON**

[b. Chemical, metallurgical or any other type of substance or composition; and,]**HON**

[c. Matters excluded from patent protection]**CAND,HON,MER**

[3.3. Parties may establish limitations and exceptions to the rights of utility model owners provided that such exceptions do not unreasonably conflict with a normal exploitation of the protected models and do not unreasonably prejudice the legitimate interests of the owner of the protected model, taking account of the legitimate interests of third parties]**MER**