EUROPEAN FREE TRADE ASSOCIATION

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DECISION OF THE JOINT EFTA-TURKEY COMMITTEE
No. 4 of 1998

(Adopted at the fourth meeting on 4 February 1998)

AMENDMENT TO THE AGREEMENT

AMENDMENT TO ARTICLE 15 AND NEW ANNEX XII
ON PROTECTION OF INTELLECTUAL PROPERTY

THE JOINT COMMITTEE,

Having regard to the developments in the field of intellectual property at the international and the European levels, in particular the entry into force of the WTO TRIPS Agreement,

Having regard to Article 28 of the Agreement,

DECIDES:

The Agreement shall be amended as follows:

1. Article 15 shall be replaced with the following wording:

"Protection of intellectual property

1. The States Parties to this Agreement shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, including measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Article, Annex XII to this Agreement and the international agreements referred to therein.

2. The States Parties to this Agreement shall accord to each others’ nationals treatment no less favourable than that they accord to their own nationals. Exemptions from this obligation must be in accordance with the
substantive provisions of Article 3 of the WTO Agreement of 15 April 1994 on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

3. The States Parties to this Agreement shall grant to each others' nationals treatment no less favourable than that accorded to nationals of any other State. Exemptions from this obligation must be in accordance with the substantive provisions of the TRIPS Agreement, in particular Articles 4 and 5 thereof.

4. The States Parties to this Agreement agree, upon request of any State Party, to review the provisions on the protection of intellectual property rights contained in the present Article and in Annex XII, with a view to further improve levels of protection and to avoid or remedy trade distortions caused by actual levels of protection of intellectual property rights.”.

2. Annex XII shall be added with the following wording:

“ANNEX XII

REFERRED TO IN ARTICLE 15

PROTECTION OF INTELLECTUAL PROPERTY

Article 1

Definition and scope of protection

“Intellectual property protection” comprises in particular protection of copyright and neighbouring rights, including computer programmes and databases, trademarks for goods and services, geographical indications, including appellations of origin, industrial designs, patents, plant varieties, topographies of integrated circuits, as well as undisclosed information.

Article 2

International conventions

(1) The States Parties to this Agreement reaffirm their commitment to comply with the obligations and rights set out in the following multilateral agreements:

- WTO Agreement of 15 April 1994 on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement);

- Paris Convention of 20 March 1883 for the Protection of Industrial Property (Stockholm Act, 1967);
- Bern Convention of 9 September 1886 for the Protection of Literary and Artistic Works (Paris Act, 1971);

(2) The States Parties to this Agreement which are not parties to one or more of the agreements listed below shall undertake to obtain their adherence to the following multilateral agreements until 1 January 1999 from the date of entry into force of this Agreement:

- International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention);
- International Convention of 2 December 1961 for the Protection of New Varieties of Plants (UPOV Convention);
- Protocol of 27 June 1989 Relating to the Madrid Agreement Concerning the International Registration of Marks;

(3) The States Parties to this Agreement agree to promptly hold expert consultations, upon request of any State Party, on activities relating to the identified or to future international conventions on harmonization, administration and enforcement of intellectual property rights and on activities in international organizations, such as the WTO and the World Intellectual Property Organization (WIPO), as well as relations of the States Parties with third countries on matters concerning intellectual property.

Article 3

Additional substantive standards

1. The States Parties to this Agreement shall ensure in their national laws at least the following:

- adequate and effective protection of copyright, including computer programmes, as well as of neighbouring rights;
- adequate and effective protection of trademarks for goods and services, in particular of well-known trademarks;
- adequate and effective means to protect geographical indications, including appellations of origin, with regard to all products and services;
- adequate and effective protection of industrial designs by providing in particular a period of protection of at least ten years from the date of application;

- compulsory licensing of patents shall only be granted under the conditions of Article 31 of the TRIPS Agreement. Licences granted on the grounds of non-working shall be used only to the extent necessary to satisfy the domestic market on reasonable commercial terms;

- adequate and effective patent protection for inventions in all fields of technology on a level similar to the one prevailing on 2 May 1992 in the states members of the European Patent Convention of 5 October 1973, in particular:
  - a term of protection of at least 20 years from the date of filing,
  - patents available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced,
  - patentability of agrochemical products and processes.

2. The States Parties to this Agreement shall ensure in their national laws, at the latest before 1 January 1999, at least the following:

- the patentability of pharmaceutical products and processes;

- adequate and effective protection of topographies of integrated circuits;

- adequate and effective protection of undisclosed information;

- adequate and effective protection of databases.

**Article 4**

**Acquisition and maintenance of intellectual property rights**

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the States Parties to this Agreement shall ensure that the procedures for grant or registration are of the same level as that provided in the TRIPS Agreement, in particular Article 62.

**Article 5**
Enforcement of intellectual property rights

The States Parties to this Agreement shall provide for enforcement provisions under their national laws of the same level as that provided in the TRIPS Agreement, in particular Articles 41 to 61.

Article 6

Technical co-operation

The States Parties to this Agreement shall agree upon appropriate modalities for technical assistance and co-operation of the respective authorities of the States Parties. To this end, they shall co-ordinate efforts with relevant international organizations.”.

3. The above amendments shall enter into force when the instruments of acceptance have been deposited by all the States Parties with the Depositary which shall notify all the other States Parties.

4. The Secretary-General of the European Free Trade Association shall deposit the text of this Decision with the Depositary.