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**International Trade. DR-CAFTA  
Implementation Bill 424-06. By Y.  
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With the signature and ratification of the Dominican Republic- Central America Free Trade Agreement (DR-CAFTA), the DR remained compromised with accomplishing a series of legislative modifications and restructurings, so as to harmonize the Dominican internal legislations with the agreement's dispositions. This will allow a more efficient implementation of the FTA, rendering better results for all contracting parties.

To comply with the commitment contracted by the DR, the government issued on November 27th the Dominican Republic- Central America Free Trade Agreement (DR-CAFTA) Implementation Bill 424-06, containing the amendments and adaptations that the different economic and government sectors have reckoned are necessary.

Subsequently we will expose the most significant modifications to each law.

**Modifications to Law 20-00 on  
Industrial Property.**

A compensation term for the time limit of patents is created to rectify an unreasonable delay on the part of the Inventions Bureau or of the competent authority on commercialization permits

(in case of pharmaceutical products). The time limit will be deferred by a maximum of 3 years, when the Bureau has delayed the granting of a registration of a patent and in the cases in which the competent authority of the commercialization permits has incurred in an unreasonable delay. This time limit will only be deferred a single time, and it should be requested as of 60 days of the expedition of the patent or the commercialization permit.

The concept of industrial design is expanded to include as part of the definition graphic symbols and typographic characters and the concept of geographical indication is included, among others. The basis of excluded subject matter has been extended, ruling out industrial designs that make an unauthorized use of a royalty protected work. The requirements to request protection of an industrial design also have been expanded; taking into account the degree of freedom the author has when developing his design.

With regards to the registration application, the International Classification for Industrial Designs under the Locarno Agreement has been adopted. A registration application will be able to contain a maximum of 20 designs, whenever they fit into the same class in the referred classification system. To admit a registration application, it should contain a series of elements, which remain equal to those of law 20-00 in the actual bill;



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nevertheless, the disposition that permitted the rectification of incomplete applications was eliminated, acknowledging that an incomplete application will not be admitted to procedure. This affects the disposition for the submission date, which is the starting point for certain time-limits (for example, to determine if there was or not an unreasonable delay). This request is subject to an examination, which is regulated extensively and in detail in the government bill of implementation.

Scents and sounds are recognized as possible registered trademarks, which was not contemplated in law 20-00, having to supply the corresponding graphic representations at the moment of its registration.

The minimum reformatory prison sanction is increased from 3 to 6 months, and the fine from 10-50 to 50-100 minimum wages. The right for any person interested in filing penal charges, without need to mediate an accusation from the right holder, is granted.

As for border measures, the bill adopted the model procedure established by the WTO in the TRIPS. This procedure seeks that customs authorities suspend the dispatch of merchandise allegedly fake. The procedure is briefly contemplated in law 65-00 on royalties and this government bill expands it, although the procedure is legislated in a more

detailed way in Law 20-00 by the same bill.

### **Modifications to Law 65-00 on Royalties.**

One of the most important changes done to this law is the extension of the time-limit of protection of royalties from 50 to 70 years, starting from its first publication; granting a grace period of 50 years to publish, from which will run the 70 years time-limit.

As for the involved parties, the concept has been expanded to include not only authors, but also interpreters, executants and producers. Also, greater autonomy of the will is granted to active participants of royalties, for example to determine the onerous nature of certain expositions and work reproductions, the payment forms of revenues between authors and producers, etc.

Concerning the sanctioning procedure, very significant changes are proposed among which is authorizing the ONDA (Nation Royalties Bureau, know for its acronym in Spanish ONDA) or any other competent authority, to initiate temporary or permanent procedures to close establishments that air unauthorized broadcasting or cable signals, without requiring the petition of an interested part or of the right holder. Also the specific way in which resolutions and/or judicial or



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administrative decisions are rendered has been regulated. A presumption of appointed holder is established, admitting proof to the contrary, in favour of the person whose name is indicated as author, producer, interpreter, executant or publisher of the work in question.

The minimum time of reformatory prison has been extended from 3 to 6 months. The judge is granted competence to confiscate and/or destroy, or donate with means of charity, with authorization from the right holder, the allegedly infringing merchandise and materials used to produce them; eliminating the previous disposition that permitted that this merchandise were delivered to the damaged author, without affecting the right to a proper compensation for damages that he could request. In case of border measures, the only action that can be taken is destruction, but the right holder has the legal right to request that they be disposed otherwise.

The compensation that corresponds to the right should be adequate and to determine so certain elements should be taken into account, such as:

- a. the profit he would have obtained;
- b. the revenue he would have obtained had he authorized the exploitation;
- c. the value of the good or service object to the infraction; or,
- d. if it were impossible to calculate the real damage, a sum between RD\$20,000.00 and RD\$2,000,000.00, up to the judge's discretion, with the intention to repair the damages and dissuade from future infractions.

Another significant modification is that concerning border measures, dispositions which were added to the Law 20-00 on Industrial Property and detailed more specifically adopting the TRIPS established model.

Finally, a new Title was added, changing thus the numbering of the law. This title will address prohibitions related to technological measures, rights management information and of satellite codified program carrier signals.

Finalmente, se añadió un nuevo Título, cambiando así la numeración de la ley, que versará sobre las prohibiciones relacionadas a medidas tecnológicas, información de gestión de derechos y señales de satélite codificadas portadoras de programas.

**Modifications to Law 76-02 that implements the Procedural Penal Code.**



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Regarding violations of industrial property rights, specifically concerning trademark rights, it has been established that they will be pursuable so much by private action as by public action.

### **Modifications to General Telecommunications Law No. 153-98.**

Article 111 is modified, establishing that civil or penal actions will be independent from administrative ones.

### **Modifications to Law 173 of 1966 that Protects Importing Agents of Merchandise and Products.**

The new dispositions concerning Law 173 will only be applicable to concession contracts signed after the entering into force of the DR-CAFTA, unless the contracting parties have determined to rule their contract under the old regulation of Law 173. The contracts covered by said law, meaning those signed before the FTA or those that even though being signed after the entering into force of the DR-CAFTA have arranged for the contract to be ruled by the previous dispositions of law 173, should be registered in the Banco Central according to Article 10 of this law.

Among the changes introduced to Law 173, it has been recognized that the contract's termination date of is the one established within the contract, and that a supplier will not be obliged to pay damages for terminating a contract with a just cause or for not renewing it.

Another discussed subject was that of exclusivity. The exclusivity of a distribution contract will only be interpreted as such, when in the terms of the contract it has been declared explicitly so.

### **Modifications to Law 226-06 that grants corporate personhood, functional, budgetary, administrative, and technical autonomy, and own patrimony to the Ministry of Customs (Known by its acronym in Spanish DGA)**

Article 14 has been modified to clarify the collection methods of rates and surcharges, used to cover the expenses of the services offered by the DGA. The implementation law establishes that the sum will be specific and not ad-valorem.

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