

CHAPTER XX

INTELLECTUAL PROPERTYArticle 1
Objectives

The objectives of this chapter are to:

- (a) facilitate the production and commercialization of innovative and creative products between the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

*Sub-Section 1***Principles**Article 2
Nature and Scope of Obligations

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties including the WTO Agreement on Trade-related Aspects of Intellectual Property (hereinafter called TRIPS Agreement). The provisions of this chapter shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property.
2. For the purpose of this Agreement, intellectual property rights embody at least:
 - (a) copyright, including copyright in computer programs and in databases;
 - (b) rights related to copyright;
 - (c) rights related to patents, including rights derived from supplementary protection certificates;
 - (d) utility models in so far as these are protected as exclusive property rights in the domestic law concerned;
 - (e) trade marks;
 - (f) trade names in so far as these are protected as exclusive property rights in the domestic law concerned;
 - (g) designs;
 - (h) layout-designs (topographies) of integrated circuits;

- (i) geographical indications, including designations of origin;
- (j) plant variety rights; and
- (k) protection of undisclosed information.

3. Protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).

Article 3 **Public health concerns**

1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.
2. The Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.

Article 4 **Exhaustion**

The Parties shall be free to establish their own regime for exhaustion of intellectual property rights, subject to the provisions of the TRIPS Agreement.

Sub-Section 2

Standards Concerning Intellectual Property Rights

Article 5

Copyright and Related Rights

Article 5.1 – Protection Granted

1. The Parties shall respect the rights and obligations as set out in the Berne Convention for the Protection of Literary and Artistic Works (1886, last amended in 1979), the WIPO Copyright Treaty – WCT (Geneva, 1996), and the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996). The Parties shall comply with Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).
2. The moral rights of the authors and performers shall be protected in accordance with Article *6bis* of the Berne Convention for the Protection of Literary and Artistic Works and Article 5 of the WIPO Performances and Phonograms Treaty (WPPT).
3. The Parties may provide for limitations to the rights set out in this Article only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holder.

Article 5.2 - Duration of Authors' Rights

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
4. Where a work is published in volumes, parts, installments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each separately.
5. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within 70 years from their creation, the protection shall terminate.

6. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music specifically created for use in the cinematographic or audiovisual work.

Article 5.3 - Duration of Related Rights

1. The rights of performers shall expire not less than 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

2. The rights of producers of phonograms shall expire not less than 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public.

3. The rights of producers of the first fixation of a film shall expire not less than 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

4. The rights of broadcasting organizations shall expire not less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 5.4 – Protection of previously unpublished works

The Parties shall ensure that any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.

Article 5.5 – Co-operation on Collective Management of Rights

The Parties shall endeavour to facilitate the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access and delivery of content between the territories of the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works or other copyright-protected subject matters. The Parties

shall endeavour to achieve a high level of rationalisation and transparency with regard to the execution of their tasks of their respective collecting societies.

Article 5.6 – Resale Right

1. The Parties shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.
3. The Parties may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.
4. The royalty shall be payable by the seller. The Parties may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.

Article 5.7 - Fixation right

1. For the purpose of this provision fixation means the embodiment of sounds and images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device
2. The Parties shall provide for performers the exclusive right to authorise or prohibit the fixation of their performances.
3. The Parties shall provide for broadcasting organisations the exclusive right to authorise or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.
4. A cable distributor shall not have the right provided for in paragraph 2 where it merely retransmits by cable the broadcasts of broadcasting organisations.

Article 5.8 – Broadcasting and Communication to the Public

1. The Parties shall provide performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.
2. The Parties shall ensure that a single equitable remuneration is paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used

for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

3. The Parties shall provide broadcasting organizations the exclusive right to authorize or prohibit the re-transmission of their broadcasts by any means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Article 5.9 - Distribution right

1. The Parties shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.

2. The Parties shall provide the exclusive right to make available to the public, by sale or otherwise, the works indicated in points (a) to (d), including copies thereof:

- (a) for performers, fixations of their performances;
- (b) for phonogram producers, their phonograms;
- (c) for producers of the first fixation of films, the original and copies of their films;
- (d) for broadcasting organisations, fixations of their broadcasts as set out in Article 5.7 (2).

Article 5.10 - Reproduction right

The parties shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

- (a) for authors, of their works;
- (b) for performers, of fixations of their performances;
- (c) for phonogram producers, of their phonograms;
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films;
- (e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

Article 5.11 - Right of communication to the public of works and right of making available to the public other subject-matter

1. The Parties shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. The Parties shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

- (a) for performers, of fixations of their performances;
- (b) for phonogram producers, of their phonograms;
- (c) for the producers of the first fixations of films, of the original and copies of their films;
- (d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. Both Parties agree that the rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.

Article 5.12 - Exceptions and limitations

1. The Parties shall provide that temporary acts of reproduction referred to in Article 5.10, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

- (a) a transmission in a network between third parties by an intermediary, or
- (b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 5.10.

2. Where the Parties provide for an exception or limitation to the right of reproduction pursuant to Article 5.10, they may provide similarly for an exception or limitation to the right of distribution as referred to in paragraph 1 of Article 5.9 to the extent justified by the purpose of the authorised act of reproduction.

Article 5.13 - Protection of Technological Measures

1. The parties shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

2. The parties shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

- (a) are promoted, advertised or marketed for the purpose of circumvention of, or
- (b) have only a limited commercially significant purpose or use other than to circumvent, or
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of,

any effective technological measures.

3. For the purposes of this Agreement, the expression 'technological measures' means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or any right related to copyright as provided for by law. Technological measures shall be deemed 'effective' where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.

4. Where Parties provide for limitations to the rights set out in paragraphs 1, 2 and 3 of Article 5.8 they may also make provision to ensure that right holders make available to a beneficiary of an exception or limitation the means of benefiting from that exception or limitation – to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject matter concerned.

Article 5.14 - Protection of Rights Management Information

1. The parties shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Agreement from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by law.

2. For the purposes of this Agreement, the expression 'rights-management information' means any information provided by right holders which identifies the work or other subject-matter referred to in this Agreement, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

3. Paragraph 2 shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Agreement.

Article 6 Trademarks

Article 6.1 – International Agreements

The European Community and Canada shall make all reasonable efforts to comply with the Trademark Law Treaty (1994) and to accede to the Singapore Treaty on the law of

Trademarks (2006) as well as to the *Madrid Agreement concerning the International Registration of Marks* and the related Protocol.

Article 6.2 – Registration Procedure

The European Community and Canada shall provide for a system for the registration of trademarks in which each final decision taken by the relevant trademark administration is duly reasoned and in writing. As such, reasons for the refusal to register a trademark shall be communicated in writing to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal before Court. The European Community and Canada shall introduce the possibility to oppose trademark applications. Such opposition proceedings shall be adversarial. The Parties shall provide a publicly available electronic database of trademark applications and trademark registrations.

Article 6.3 – Well-known Trademarks

The Parties shall co-operate with the purpose of making protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention (1967) and Article 16(2) and (3) of the TRIPS Agreement, effective.

Article 6.4 – Exceptions to the Rights Conferred by a Trademark

The Parties shall provide for the fair use of descriptive terms, including geographical indications, as a limited exception to the rights conferred by a trademark. They may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 7 **Geographical Indications**

*This article is currently under development.
A text will be provided as soon as possible.*

Article 8 **Designs**

Article 8.1 - International Agreements

The European Community and Canada shall accede to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs (1999).

Article 8.2 - Definitions

1. For the purpose of this agreement "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.
2. In this context, "product" means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get up, graphic symbols and typographic typefaces, but excluding computer programs. "Complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.

Article 8.3 - Requirements for Protection of Registered Designs

1. The European Community and Canada shall provide for the protection of independently created designs that are new and have individual character. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this article.
2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:
 - (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and
 - (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.
3. "Normal use" within the meaning of paragraph 2(a) shall mean use by the end user, excluding maintenance, servicing or repair work.

Article 8.4 - Rights Conferred by Registration

The owner of a registered design shall have the right to prevent third parties not having the owner's consent, at least from making, offering for sale, selling, importing, exporting, stocking or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.

Article 8.5 - Protection Conferred to Unregistered Designs

The European Community and Canada shall provide the legal means to prevent the use of the unregistered appearance of a product, only if the contested use results from copying the unregistered appearance of the product. Such use shall at least cover offering for sale, putting on the market, importing and exporting the product.

Article 8.6 - Term of Protection

1. The duration of protection available in the Parties following registration shall amount to at least five years. The right holder may request to have the term of protection renewed for at least one more period of five years with a maximum of up to a total term of 25 years from the date of filing.
2. The duration of protection available in the European Community and Canada for the unregistered appearance of a product shall amount to at least three years from the date on which the design was made available to the public in one of the Party concerned.

Article 8.7 - Exceptions

1. The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
2. Design protection shall not extend to designs dictated essentially by technical or functional considerations. In particular a design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.
3. A design right shall not subsist in a design which is contrary to public order or to accepted principles of morality.

Article 8.8 - Relationship to Copyright

A design registered in the European Community or in Canada in accordance with this Article shall be eligible for protection under the law of copyright of that Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

Article 9 Patents

Article 9.1 - International Agreements

The Parties shall make all reasonable efforts to comply with Articles 1 through 16 of the Patent Law Treaty (Geneva, 2000).

Article 9.2 - Supplementary Protection Certificates

1. The Parties recognise that medicinal and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.
2. The Parties shall provide for a further period of protection for a medicinal or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in paragraph 1 second sentence above, reduced by a period of five years.
3. Notwithstanding paragraph 2 and the possible extension for paediatric use for pharmaceutical products, the duration of the further period of protection may not exceed five years.

Article 10

Protection of Data Submitted to Obtain an Authorisation to put a Pharmaceutical Product on the Market

1. The Parties shall guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a pharmaceutical product on the market.
2. For that purpose, the Parties shall ensure in their respective legislation that any information submitted to obtain an authorisation to put a pharmaceutical product on the market will remain undisclosed to third parties and benefit from a period of at least ten years of protection against unfair commercial use starting from the date of grant of marketing approval in either of the Parties.
 - (a) during a period of at least eight years, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, will without the explicit consent of the person or entity who submitted this data, rely directly or indirectly on such data in support of an application for the authorisation to put a pharmaceutical product on the market;
 - (b) during a ten-year period, any subsequent application for the authorisation to put a pharmaceutical product on the market would not be granted, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant. Products registered without submission of such data would be removed from the market until the requirements were met.
3. In addition, the ten-year period referred shall be extended to a maximum of eleven years if, during the first eight years after obtaining the authorisation in either of the Parties, the holder of the basic authorisation obtains an authorisation for one or more new therapeutic

indications which are considered of significant clinical benefit in comparison with existing therapies.

4. If a Party relies on "patent linkage" mechanisms whereby the granting of marketing authorizations (or notices of compliance or similar concepts) for generic medicines is linked to the existence of patent protection, it shall ensure that the patent holders and the manufacturers of generic medicines are treated in a fair and equitable way, including regarding their respective rights of appeal.

Article 11

Data Protection on Plant Protection Products and Rules on Avoidance of Duplicative Testing

1. The Parties shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.

2. The Parties shall recognise a temporary right to the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product.

During such period, the test or study report will not be used for the benefit of any other person aiming to achieve a marketing authorisation for plant protection product, except when the explicit consent of the first owner is proved. This right will be hereinafter referred as data protection.

3. The test or study report should fulfil the following conditions:

- (a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops, and
- (b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.

4. The period of data protection should be ten years starting at the date of the first authorisation in that Party. In case of low risk plant protection products the period can be extended to 13 years.

5. Those periods shall be extended by three months for each extension of authorisation for minor uses¹ if the applications for such authorisations are made by the authorisation holder at the latest five years after the date of the first authorisation. The total period of data protection may in no case exceed 13 years. For low risk plant protection products the total period of data protection may in no case exceed 15 years.

6. A test or study shall also be protected if it was necessary for the renewal or review of an authorisation. In those cases, the period for data protection shall be 30 months.

7. Rules to avoid duplicative testing on vertebrate animals will be laid down by the Parties. Any applicant intending to perform tests and studies involving vertebrate animals

¹ Minor use: use of a plant protection product in a particular Party on plants or plant products which are not widely grown in that particular Party or widely grown to meet an exceptional plant protection need.

shall take the necessary measures to verify that those tests and studies have not already been performed or initiated.

8. The new applicant and the holder or holders of the relevant authorisations shall make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. The prospective applicant is only required to share in the costs of information he is required to submit to meet the authorisation requirements.

9. Where the new applicant and the holder or holders of the relevant authorisations of plant protection products cannot reach agreement on the sharing of test and study reports involving vertebrate animals, the new applicant shall inform the Party.

10. The failure to reach agreement shall not prevent the Party from using the test and study reports involving vertebrate animals for the purpose of the application of the new applicant.

11. The holder or holders of the relevant authorisation shall have a claim on the prospective applicant for a fair share of the costs incurred by him. The Party may direct the parties involved to resolve the matter by formal and binding arbitration administered under national law.

Article 12 **Plant Varieties**

The Parties shall co-operate to promote and reinforce the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (UPOV) as revised on March 19, 1991, including the optional exception to the breeder's right as referred to in Article 15(2) of the said Convention.

Sub-Section 3

Enforcement of Intellectual Property Rights

Article 14 **General Obligations**

1. The Parties shall ensure that any measures, procedures and remedies for the enforcement of intellectual property rights are fair and equitable, and are not unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays.

2. Those measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 15
Entitled Applicants

The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this section and in Part III of the TRIPS Agreement:

- (a) the holders of intellectual property rights in accordance with the provisions of the applicable law,
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,
- (c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law,
- (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

Article 16
Evidence

The Parties shall take such measures as are necessary, in the case of an infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate and following an application, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 17
Measures for Preserving Evidence

1. The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by an entity who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. Each Party may provide that such measures include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

Article 18
Right of Information

1. The Parties shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:
 - (a) was found in possession of the infringing goods on a commercial scale;
 - (b) was found to be using the infringing services on a commercial scale;
 - (c) was found to be providing on a commercial scale services used in infringing activities; or
 - (d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.
2. The information referred to in paragraph 1 shall, as appropriate, comprise:
 - (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
 - (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.
3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:
 - (a) grant the right holder rights to receive fuller information;
 - (b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
 - (c) govern responsibility for misuse of the right of information;
 - (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his own participation or that of his close relatives in an infringement of an intellectual property right ; or
 - (e) govern the protection of confidentiality of information sources or the processing of personal data.

Article 19
Provisional and Precautionary Measures

1. The Parties shall ensure that the judicial authorities may, at the request of the applicant issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of

guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

Article 20 **Corrective Measures**

1. The Parties shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the recall, definitive removal from the channels of commerce or destruction of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order destruction of materials and implements principally used in the creation or manufacture of those goods.
2. The judicial authorities shall order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article 21 **Injunctions**

1. The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement.
2. Where provided for by domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. The Parties shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

Article 22
Alternative Measures

The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 20 'corrective measures' and/or Article 21 'injunctions', the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 20 'corrective measures' and/or Article 21 'injunctions' if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article 23
Damages

1. The Parties shall ensure that when the judicial authorities set the damages:
 - (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement ; or
 - (b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.
2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

Article 24
Legal Costs

The Parties shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow this.

Article 25
Publication of Judicial Decisions

The Parties shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

The Parties may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

Article 26
Presumption of Authorship or Ownership

For the purposes of applying the measures, procedures and remedies provided for under this Agreement in relation to the enforcement of copyright and related rights,

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;
- (b) the provisions under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

Article 27
Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in the relevant provisions of this sub-section.

Article 28
Criminal Sanctions

[This text will be specified later]

Article 29
Liability of Intermediary Service Providers

Article 29.1 – Use of Intermediaries' Services

Both Parties recognise that the services of intermediaries may be used by third parties for infringing activities. To ensure the free movement of information services and at the same time enforce intellectual property rights in the digital environment, the Parties shall provide for the following measures for intermediary service providers where they are in no way involved with the information transmitted.

Article 29.2 - Liability of Intermediary Service Providers: "Mere Conduit"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2 The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3 This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

Article 29.3 - Liability of Intermediary Service Providers: "Caching"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- (a) the provider does not modify the information;
- (b) the provider complies with conditions on access to the information;
- (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

Article 29.4 - Liability of Intermediary Service Providers: Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

- (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for the Parties of establishing procedures governing the removal or disabling of access to information.

Article 29.5 - No General Obligation to Monitor

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 29.2, 29.3 and 29.4, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

2. The Parties may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

Article 30

Border Measures

1. The Parties shall, unless otherwise provided for in this section, adopt procedures² to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, entry or exit of the customs territory, placement under a suspensive procedure or placement under a free zone or a free warehouse of goods infringing an intellectual property right³ may take place, to lodge an application in writing with competent authorities,

² It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder.

³ For the purposes of this provision, "goods infringing an intellectual property right" means:
(a) "counterfeit goods", namely:

administrative or judicial, for the suspension by the customs authorities of the release into free circulation or the detention of such goods.

2. The Parties shall provide that when the customs authorities, in the course of their actions and before an application has been lodged by a right holder or granted, have sufficient grounds for suspecting that goods infringe an intellectual property right, they may suspend the release of the goods or detain them in order to enable the right holder to submit an application for action in accordance with the previous paragraph.

3. The competent customs department shall inform the right-holder and the holder of the goods of its action and is authorised to inform them of the actual or estimated quantity and the actual or supposed nature of the goods whose release has been suspended or which have been detained.

4. With a view to establishing whether an intellectual property right has been infringed, the customs office shall inform the right-holder, at his request and if known, of the names and addresses of the consignee, the consignor or the holder of the goods and the origin and provenance of goods suspected of infringing an intellectual property right.

The customs office shall give the applicant the opportunity to inspect goods whose release has been suspended or which have been detained. When examining goods, the customs office may take samples and hand them over or send them to the right-holder, at his express request, strictly for the purposes of analysis and to facilitate the subsequent procedure.

5. Any rights or obligations established in the implementation of Section 4 of Part III of the TRIPS Agreement concerning the importer shall be also applicable to the exporter or to the holder of the goods.

Article 31

Codes of Conduct and Forensic Co-operation

1. Parties shall encourage:

(a) the development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture;

(i) goods, including packaging, bearing without authorisation a trademark identical to the trademark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the trademark holder's rights;

(ii) any trademark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as the goods referred to in point (i);

(iii) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in point (i);

(b) "pirated goods", namely goods which are or contain copies made without the consent of the holder, or of a person duly authorised by the holder in the country of production, of a copyright or related right or design right, regardless of whether it is registered in national law;

(c) goods which, according to the law of the Party in which the application for customs action is made, infringe a patent, a plant variety right, a design or a geographical indication.

(b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.

2. Parties shall co-operate in order to identify forensically illegal optical discs which are produced by plants located in their territory.

Sub-Section 4

Article 32
Co-operation

1. The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this chapter.

2. *[To be specified – Institutional body]*