

**CHAPTER [XX]  
INTELLECTUAL PROPERTY**

**Section A – General Provisions and Principles**

*Article X.1*

**General Provisions**

1. Each Party affirms the rights and obligations under the WTO Agreement on Trade Related Aspect of Intellectual Property Rights, and any other multilateral agreement related to intellectual property to which it is a Party.
2. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice, in a manner consistent with the objectives and principles of the TRIPS Agreement and of this Chapter.
- [3. Nothing in this Chapter shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Chapter to be directly invoked in the domestic legal systems of the Parties. A Party shall not provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Chapter.]

*Article X.2*

**Objectives**

The objectives of this Chapter are to:

- a) Facilitate access, production and commercialisation of innovative and creative products and foster trade and investment between the Parties contributing to a more sustainable, equitable and inclusive economy for the Parties;
- b) Achieve an adequate and effective level of protection and enforcement of intellectual property rights that provides incentives and rewards to innovation while contributing to the effective transfer and dissemination of technology and favouring social and economic welfare and the balance between the rights of the holders and the public interest;
- c) Foster measures that will help the Parties to promote research and development, and access to knowledge, including to a rich public domain.

*Article X.3*

### **Nature and Scope of Obligations**

1. For the purposes of this Agreement, intellectual property rights refer to all categories of intellectual property that are the subject of sections 1 through 7 of Part II of the TRIPS Agreement and Article X.9 through Article X.43 of this Chapter.
2. Protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).
3. Nothing shall prevent a Party from adopting measures necessary to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with the provisions of this Chapter.
4. The Parties acknowledge the provisions in the TRIPS Agreement regarding competition.
5. This Chapter does not create any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.
6. No Party shall be obliged to implement in its law more extensive protection than is required by this Chapter. This Chapter does not preclude the Parties from applying provisions of domestic law introducing higher standards for the protection and enforcement of intellectual property, provided that they do not violate the provisions of this Chapter.

### *Article X.4*

#### **Principles**

1. Each Party recognises that the protection and enforcement of intellectual property rights can and must be done in a manner conducive to economic, social and scientific progress. Each Party shall ensure the enforcement of intellectual property rights within its own legal system and practice.
2. In formulating or amending its laws and regulations, each Party may establish exceptions and flexibilities permitted by the multilateral instruments to which the Parties are Signatories.
3. The Parties support the achieving of the United Nations Sustainable Development Goals (SDGs).
4. The Parties support the World Health Assembly Resolution WHA 60.28 and the Pandemic Influenza Preparedness (PIP) Framework adopted on The Sixty-fourth World Health Assembly.
5. The Parties recognise the importance of promoting the implementation of Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the World Health Assembly on 24 of May 2008 (Resolution WHA 61.21 as amended by Resolution WHA 62.16).
6. The Parties acknowledge the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO).

7. Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party shall make best efforts to ensure the procedures for granting or registration of the right are conducive to the granting or registration within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

*Article X.5*

**National Treatment**

Each Party shall accord to the nationals of another Party treatment no less favourable than that it accords to its own nationals with regard to the protection<sup>1</sup> of intellectual property rights covered by this Chapter, subject to the exceptions already provided for in Article 3 and 5 of the TRIPS Agreement.

*Article X.6*

**Protection of Biodiversity and Traditional knowledge**

1. The Parties recognise the importance and value of biological diversity and its components and of the associated traditional knowledge, innovations and practices of indigenous and local communities<sup>2</sup>. The Parties furthermore reaffirm their sovereign rights over their natural resources and recognise their rights and obligations as established by the Convention of Biological Diversity of 1992 (henceforth referred to as CBD) with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilisation of these genetic resources.

2. Recognising the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions, the parties agree that access to genetic resources for food and agriculture shall be subject to specific treatment in accordance with the International Treaty on Plant Genetic Resources for Food and Agriculture (2001).

3. The Parties may, by mutual agreement, review this Article subject to the results and conclusions of multilateral discussions.

*Article X.7*

**Exhaustion**

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<sup>1</sup> For the purposes of Article X.5 “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

<sup>2</sup> For the purposes of Article X.6, "indigenous and local communities" may include descendants of enslaved Africans and small scale farmers.

1. Each Party shall be free to establish its own regime for exhaustion of intellectual property rights subject to the provision of the TRIPS Agreement.
2. In the area of copyright and related rights, exhaustion of rights applies only to the distribution to the public by sale or otherwise of the original of tangible works or tangible copies thereof.

*Article X.8*

**TRIPS Agreement and Public Health**

1. The Parties recognise the importance of the declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 (hereinafter referred to as the “Doha Declaration”) by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with the Doha Declaration.
2. The Parties shall implement Article 31bis of the TRIPS Agreement, as well as the Annex and Appendix to the Annex related thereto, which entered into force on January 23, 2017.

**Section B - Standards Concerning Intellectual Property Rights**

**Sub-Section 1 - Copyright and related rights<sup>3</sup>**

*Article X.9*

**International Treaties**

Each Party affirms its rights and obligations under the following international agreements taking into consideration that treaties are not binding on those that are not parties to them:

- a) The Berne Convention for the Protection of Literary and Artistic Works (‘the Berne Convention’);
- b) The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the “Rome Convention”); and,
- c) The Marrakesh Treaty to facilitate access for persons who are blind, visually impaired, or otherwise print disabled.

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<sup>3</sup> Parties shall be free, in their domestic law, to use different names for the rights set out in this Sub-Section provided the agreed level of protection is ensured.

- d) The WIPO Copyright Treaty, adopted in Geneva on 20 December 1996; and
- e) The WIPO Performances and Phonograms Treaty, adopted in Geneva on 20 December 1996.
- f) Beijing Treaty on Audiovisual Performances.

*Article X.10*

**Authors**

Each Party shall provide for authors the exclusive right to authorise or prohibit:

1. Direct or indirect, temporary<sup>4</sup> or permanent reproduction by any means and in any form, in whole or in part of their works;
2. Any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof;
3. Any communication to the public of their works, by wire or wireless means.
4. 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.

*Article X.11*

**Performers**

Each Party shall provide for performers the exclusive right to authorise or prohibit:

1. The fixation<sup>5</sup> of their performances;
2. The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of fixations of their performances;
3. The distribution to the public, by sale or otherwise, of the fixations of their performances.

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<sup>4</sup> For the purposes of this Sub-Section, the term “temporary” means reproduction for a limited period and does not include incidental or ephemeral reproduction. By “incidental” or “ephemeral” we understand the type of reproduction having the sole purpose of making a work accessible instead of making a copy.

<sup>5</sup> Fixation means the embodiment of sounds or images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

4. 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. This article also applies for broadcasting by wire means when the legislation of a Party allows it.

5. The making available to the public of fixations of their performances in such a way that members of the public may access them from a place and at a time individually chosen by them.

*Article X.12*

**Producers of phonograms**

Each Party shall provide for phonogram producers the exclusive right to authorise or prohibit:

1. The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their phonograms;
2. The distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;
3. The making available to the public of their phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

*Article X.13*

**Broadcasting Organisations**

Each Party may stipulate the legal requirements in their domestic laws as to what is to be considered a broadcasting organisation and also shall provide them with the exclusive right to authorise or prohibit:

1. The fixation of their broadcasts;
2. The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts;
3. The making available to the public, by wire or wireless means, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite in such a way that members of the public may access them from a place and at a time individually chosen by them.
4. The distribution to the public, by sale or otherwise, of fixations of their broadcasts, and;

5. The rebroadcasting of their broadcasts by wireless means, or where the domestic legislation so provides retransmission by wire 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.<sup>6</sup>

*Article X.14<sup>7</sup>*

**Right to remuneration for broadcasting and communication to the public of phonograms published for commercial purposes**

1. Each Party shall provide a right in order to ensure that a remuneration is paid by the user to the performers and producers of phonograms, 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.
2. Each Party shall provide either that the remuneration be claimed from the user by the performer or by the producer of a phonogram or by both. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share such remuneration.

*Article X.15*

**Term of protection**

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 not less than for 50 years or, where the domestic legislation of the Party so provides, for 70 years after the author's death. With respect to photographic and cinematographic works each Party will establish the term of protection according to their domestic laws.
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 not less than 50 years or, where the domestic legislation of the Party so provides, for 70 years, after the

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<sup>6</sup> Each Party may grant more extensive rights as regards the communication to the public by broadcasting organisations.

<sup>7</sup> Each Party may grant more extensive rights, in place of the right to remuneration or in addition to this right, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

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. The rights of performers in a performance otherwise than in a phonogram shall expire not less than fifty years after the date of the performance.

5. The rights of performers and producers of phonograms shall expire not less than 50 years or, where the domestic legislation of the Party so provides, 70 years after the fixation is lawfully published or lawfully communicated to the public.<sup>8</sup> According to their domestic law, each Party may adopt effective measures in order to ensure that the profits generated during the 20 years of protection beyond 50 years are shared fairly between the performers and producers.

6. The term of protection of the rights of the broadcasting organisations shall be at least 20 years or, where the domestic legislation of the Party so provides, 50 years from the first broadcast.

7. The terms laid down in this Article shall be calculated from the 1st January of the year following the event which gives rise to them.

8. The terms of protection may exceed the periods provided for in this Article.

#### *Article X.16*

#### **Resale Right**

1. Each Party may provide, for the benefit of the author of graphic or plastic art, a resale right, defined as an inalienable right, which cannot be waived, even in advance, to receive a percentage of the price obtained from any resale of that work, after the first transfer of that work by the author.

2. The right referred to in paragraph 1 may 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. Each Party may provide that the right referred to in paragraph 1 may 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 when the resale price does not exceed a minimum amount.

4. Each Party may provide that authors who are nationals of third countries and their successors in title may enjoy the resale right in accordance with this Article and the legislation of the Party concerned only if the legislation of the country of which the author or his/her successor in title is a national permits resale right protection in that country for authors from the Party concerned and their successors in title.

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<sup>8</sup> Each Party may provide that the publication or lawful communication to the public of the fixation of the performance or of the phonogram must occur within a defined period of respectively the date of the performance (in the case of the performers) or the date of the fixation (in the case of producers of phonograms).

*Article X.17*

**Cooperation on collective management of rights**

1. The Parties agree to promote cooperation, transparency and non-discrimination of collective management organisations, in particular as regards the revenues they collect, deductions applied to such revenue, the use of the royalties collected, the distribution policy and their repertoire, including in the digital environment.

2. Where a collective management organisation established in the territory of a Party represents a collective management organisation established in the territory of another Party by way of a representation agreement, each Party shall ensure that:

- (a) the representing collective management organisation shall not discriminate against entitled members of the represented organisation;
- (b) the representing collective management organisation must pay accurately, regularly, diligently, and in full transparency, the amounts owed to the represented organisation and provide the represented organisation with information on the amounts of revenue collected on its behalf and the deductions made.

*Article X.18*

**Exceptions and limitations**

1. Each Party shall provide for exceptions and limitations to the rights only in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holders.

2. Each Party shall provide that temporary acts of reproduction 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.

*Article X.19*

**Technological Protection Measures**

Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by right holders in connection with the exercise of their rights under this Sub-Section and that restrict acts which are not authorised by the right holders concerned or permitted by law.

Each Party, where permissible in accordance to their domestic law may ensure that right holders make available to the 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.

*Article X.20*

**Obligations concerning Rights Management Information**

1. Each Party 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 Sub-Section from which electronic rights-management information has been removed or altered without authorisation,

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 related rights.

2. For the purposes of this article "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Sub-Section, 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. The subparagraph 1 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 Article.

4. The Parties shall ensure that this protection shall not harm non-infringing uses.

**Sub-Section 2 - Trademarks**

*Article X.21*

**International Agreements**

Each Party:

- (a) shall comply with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as amended on 28 September 1979 (“Nice Classification”)<sup>9</sup>; and,
- (b) shall make best efforts to comply with the Protocol related to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007.

*Article X.22*

**Registration Procedure**

1. Each Party shall establish a system for the registration of trademarks in which each final negative decision, including the partial refusal of registration, issued by the relevant trademark administration, shall be notified in writing, duly reasoned and open to challenge.
2. Each Party shall provide for the possibility to oppose applications to register trademarks or, where appropriate, the registration of trade marks. Such opposition proceedings shall be adversarial.
3. Each Party shall provide a publicly available electronic database of applications and registrations of trademarks.

*Article X.23*

**Rights conferred by a trademark**

The registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

- (a) Any sign which is identical with the trademark in relation to goods or services which are identical with those for which the trademark is registered;
- (b) Any sign where, because of its identity with, or similarity to, the trademark and the identity or similarity of the goods or services covered by the trademark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trademark.

*Article X.24*

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<sup>9</sup> This obligation only applies to trademarks registered after the date of adoption of the Nice classification criteria or of accession to the instrument.

### **Well-known Trademarks**

1. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.
2. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.
3. For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, each Party shall take into due consideration the principles established in the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

#### *Article X.25*

### **Invalidation of the registration application in bad faith**

A trade mark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. Each Party may also provide that such a trademark shall not be registered.

#### *Article X.26*

### **Exceptions to the Rights Conferred by a Trademark**

1. Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms, including in the case of geographical indications, and 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.
2. The trademark shall not entitle the owner to prohibit a third party from using:
  - (a) Their own name or address where that third party is a natural person;

- (b) Indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;
- (c) The trademark where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts; provided he uses them in accordance with honest practices in industrial or commercial matters.

### **Sub-Section 3 - Designs**

#### *Article X.27*

#### **International Agreements**

Each Party shall make the best efforts to comply with the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs done at Geneva on 2 July 1999.

#### *Article X.28*

#### **Protection of Registered Designs**

1. Each Party shall provide for the protection of independently created designs that are new and original<sup>10</sup>. 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. The holder of a registered design shall have at least the right to use and prevent third parties not having the owner's consent at least from using and notably making, offering for sale, selling, putting on the market, importing, exporting, stocking such a product or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.

#### *Article X.29*

#### **Term of Protection**

The duration of protection available, including renewals, shall amount to at least 15 years from the date of filing the application.

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<sup>10</sup> For the purpose of this Article, a Party may consider that a design having individual character is original.

*Article X.30*

**Protection Conferred to Unregistered Designs**

Each Party may establish legal means to prevent the use of unregistered designs, according to their domestic law.

*Article X.31*

**Exceptions and Exclusions**

1. Each Party may establish 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.

*Article X.32*

**Relationship to Copyright**

A design shall also be eligible for protection under the law of copyright of a Party when this protection is provided for by its legislation and the requirements are met, 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.

**Sub-Section 4 - Geographical Indications**

*Article X.33*

**Protection of Geographical Indications**

1. This Sub-Section applies to the recognition and protection of geographical indications originating in the territory of the Parties.
2. The Parties shall take the necessary measures to implement the protection of geographical indications referred to in paragraph 1 in their territories, determining the appropriate method for such implementation within their own legal system and practice.

3. The established geographical indications of a Party to be protected by the other Party shall only be subject to this Article if they are protected as geographical indications in the territory of the Party of origin in accordance with its system of registration and protection of geographical indications.

4. The Parties, having examined both the legislation of the other Party referred to in Annex I to this Article and the geographical indications of the other Party listed in Annex II, and having completed an objection procedure or public consultation related to the geographical indications of the other Party listed in Annex II, undertake to protect since the date of entry into force of the Agreement those geographical indications in accordance with the level of protection laid down in this Sub-Section including specifically related provisions, notably as defined in Article X.35.9 and in the Appendix to Annex II.

5. Geographical indications for products other than agricultural foodstuffs products, wines, spirit drinks or aromatised wines may be protected according to the laws and regulations applicable in each Party. The Parties acknowledge that geographical indications listed under Annex III are protected as geographical indications in the country of origin.

*Article X.34*

**Addition of new Geographical Indications**

The Parties agree on the possibility to add in Annex II new geographical indications, to be protected pursuant to a mutually agreed decision taken by the Sub Committee on Intellectual Property set up in accordance with Article X.39 and after having completed the steps described in Article X.33.4 to the satisfaction of both Parties.

*Article X.35*

**Scope of Protection for Geographical Indications**

1. For the geographical indications listed in Annex II, which have been assessed pursuant to the provisions of paragraphs 3 to 12, each Party shall provide the legal means, according to its domestic legislation, for interested parties to prevent:

- (a) The use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin, in a manner which misleads the public as to the geographical origin of the good;
- (b) Any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention for the Protection of Industrial Property (1967) done at Stockholm on 14 July 1967.

2. For the geographical indications listed in Annex II, the Parties shall also provide the legal means according to its domestic legislation, for interested parties to prevent:

- (a) any direct or indirect commercial use of a protected name for comparable products not complying with the product specification of the protected name, or that exploits the reputation of a geographical indication;
- (b) the use of a geographical indication not originating in the place indicated by the geographical indication, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like;
- (c) against any misuse, imitation or deceiving use of a protected name of a geographical indication; or against any false or misleading indication to a protected name of a geographical indication; or against any practice liable to mislead the consumer as to the true origin, provenance and nature of the product.

3. Regarding the relationship between trademarks and geographical indications, the Parties agree on the following:

- (a) Where a geographical indication is protected under this Sub-Section, the Parties shall refuse the registration of a trademark for the same or a similar product, the use of which would contravene this Sub-Section, provided that an application for registration of the trademark was submitted after the date of application for protection of the geographical indication on the territory concerned. Trademarks registered in breach of this subparagraph shall be invalidated according to the legislation of the Parties.
- (b) For geographical indications listed in Annex II at the date of entry into force of the Agreement, the date of submission of the application for protection referred to in paragraph 3(a) shall be the date of the publication of the opposition procedure or public consultation in the respective territories.
- (c) For geographical indications referred to in X.34, the date of submission of the application for protection shall be the date of the transmission of a request to another Party to protect a geographical indication.
- (d) Without prejudice to paragraph 3(e), the Parties shall protect the geographical indications referred to in Annex II also where a prior trademark exists. A prior trademark shall mean a trademark, which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement.

Such trademark may continue to be used, renewed and be subject to variations which may require the filing of new trademark applications, notwithstanding the protection of the

geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks where the trademark has been registered or established.

Neither the prior trademark nor the geographical indication shall be used in a way that would mislead the consumer as to the nature of the intellectual property right concerned.

- (e) The Parties shall not be obliged to protect a geographical indication in the light of a famous, reputed or well-known trademark, where the protection is liable to mislead the consumer as to the true identity of the product.

4. Nothing shall prevent the use by a Party, with respect to any product, of a customary name of a plant variety or an animal breed, existing in the territory of that Party as of the date of entry into force of this Agreement.<sup>11</sup>

5. Nothing shall prevent the use by a Party of an individual component of a multi-component term that is protected as a geographical indication in the territory of that Party if such individual component is a term customary in the common language as the common name for the associated good.<sup>12</sup>

6. Nothing shall require a Party to protect a geographical indication which is identical to the term customary in common language as the common name for the associated good in the territory of that Party.

7. If a translation of a geographical indication is identical with or contains within it a term customary in common language as the common name for a product in the territory of a Party, or if a geographical indication is not identical with but contains within it such a term, the provisions of this Sub-Section shall not prejudice the right of any person to use that term in association with that product.

8. Regarding homonymous geographical indications, the Parties agree on the following:

- (a) In the case of existing or future homonymous geographical indications of the Parties for products falling within the same product category<sup>13</sup>, both will coexist *per se*, and each Party shall determine the practical conditions under which the homonymous indications in question shall be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

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<sup>11</sup> The Parties define in the Appendix to Annex II the plants varieties and animal breeds the use of which shall not be prevented.

<sup>12</sup> The Parties define in the Appendix to Annex II the terms for which protection is not sought/granted.

<sup>13</sup> In accordance with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, and its amendments.

- (b) Where a Party, in the context of negotiations with a third country proposes to protect a geographical indication from that third country, and the name is homonymous with a geographical indication from the other Party, the latter shall be informed and be given the opportunity to comment before the name is protected.

9. Without prejudice to paragraphs 1 to 8 of article X.35 for particular cases of geographical indications listed in Annex II and indicated below, a specific level of protection is defined, applying only to the cases listed under this point<sup>14</sup>:

#### Genièvre / Jenever

The protection of the geographical indication “Genièvre” / “Jenever” shall not prevent prior users of “Ginebra” in the territory of Argentina<sup>15</sup>, having used the term in good faith and in a continuous manner for five years prior to the publication for opposition of the geographical indication “Genièvre”/“Jenever” in Argentina and prior users of “Genebra” in the territory of Brazil<sup>16</sup> having used the term in good faith and in a continuous manner prior to the publication for opposition of the geographical indication “ Genièvre / Jenever” in Brazil, to continue using the term, provided these products are not commercialized using references (graphics, names, pictures, flags) to the genuine origin of the geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and in a non-ambiguous manner as regards to the origin of the product.

#### Queso Manchego

The protection of the geographical indication “Queso Manchego” for cheeses elaborated in Spain, in accordance with its technical specifications, using sheep’s milk, shall not prevent prior users of the term “Queso Manchego” in the territory of Uruguay<sup>17</sup>, having used the term in good faith and in a continuous manner for five years prior to the publication for opposition of the geographical indication “Queso Manchego”, when related to cheeses elaborated with cow’s milk, to continue using this term provided these products are not commercialized using references (graphics, names, picture, flags) to the protected European geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and are differentiated from it in a non-ambiguous manner as regards the origin and the composition of the product.

#### Grappamiel

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<sup>14</sup> For greater certainty, the specific level of protection by each Mercosur Member as defined in paragraph 9 of Article X.35 applies only in favour of those prior users that are part of the prior users’ list of that particular Mercosur Member.

<sup>15</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>16</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>17</sup> List of prior users: to be included before the conclusion of the agreement.

The protection of the geographical indication “Grappa” shall not prevent prior users of the term “Grappamiel” or “Grapamiel” in the territory of Uruguay<sup>18</sup>, having used the term in good faith and in a continuous manner prior to the publication for opposition of the geographical indication “Grappa” to continue using this term, provided these products are not commercialized using references (graphics, names, picture, flags) to the protected European geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product.

#### Steinhäger

The protection of the geographical indication “Steinhäger” shall not prevent prior users of the term “Steinhäger” in the territory of Brazil<sup>19</sup>, having used the term in good faith and in a continuous manner prior to the publication for opposition of the geographical indication “Steinhäger” to continue using this term, provided these products are not commercialized using references (graphics, names, picture, flags) to the protected European geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product.

#### Parmigiano Reggiano

The protection of the geographical indication “Parmigiano Reggiano” shall not prevent prior users of the term “Parmesão” in the territory of Brazil<sup>20</sup> and of the term “Parmesano” in the territory of Argentina<sup>21</sup>, Paraguay<sup>22</sup> and Uruguay<sup>23</sup>, having used these terms in good faith and in a continuous manner prior to the publication for opposition of the geographical indication “Parmigiano Reggiano” to continue using these terms, provided these products are not commercialized using references (graphics, names, picture, flags) to the protected European geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product.

The protection of the geographical indication “Parmigiano Reggiano” shall not prevent prior users of the term “Reggianito” in the territory of Argentina<sup>24</sup>, having used this term in good faith and in a continuous manner prior to the publication for opposition of the geographical indication “Parmigiano Reggiano”, and in the territory of Paraguay<sup>25</sup> and Uruguay<sup>26</sup>, having used this term in

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<sup>18</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>19</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>20</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>21</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>22</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>23</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>24</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>25</sup> List of prior users: to be included before the conclusion of the agreement.

good faith and in a continuous manner for five years prior to the publication for opposition of the geographical indication “Parmigiano Reggiano”, to continue using this term, provided these products are not commercialized using references (graphics, names, picture, flags) to the protected European geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product.

#### Fontina

The protection of the geographical indication “Fontina” shall not prevent prior users of the term “Fontina” in the territory of Argentina<sup>27</sup>, Brazil<sup>28</sup>, Paraguay<sup>29</sup> and Uruguay<sup>30</sup>, having used the term in good faith and in a continuous manner for five years prior to the publication for opposition of the geographical indication “Fontina”, to continue using this term, provided these products are not commercialized using references (graphics, names, picture, flags) to the protected European geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product.

#### Gruyère

The protection of the geographical indication “Gruyère” shall not prevent prior users of the terms “Gruyère” and “Gruyere” in the territory of Argentina<sup>31</sup>, Brazil<sup>32</sup>, Paraguay<sup>33</sup> and Uruguay<sup>34</sup>, having used the term in good faith and in a continuous manner for five years prior to the publication for opposition of the geographical indication “Gruyère”, to continue using this term, provided these products are not commercialized using references (graphics, names, picture, flags) to the protected European geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product.

The protection of the geographical indication “Gruyère” shall not prevent prior users of the terms “Gruyerito” and “Gruyer” in the territory of Uruguay<sup>35</sup>, having used the term in good faith and in a

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<sup>26</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>27</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>28</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>29</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>30</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>31</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>32</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>33</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>34</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>35</sup> List of prior users: to be included before the conclusion of the agreement.

continuous manner for five years prior to the publication for opposition of the geographical indication “Gruyère” to continue using this term, provided these products are not commercialized using references (graphics, names, picture, flags) to the protected European geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product.

#### Grana

The protection of the geographical indication “Grana Padano” shall not prevent prior users of the term “Grana” in the territory of Brazil<sup>36</sup>, having used the term in good faith and in a continuous manner for five years prior to the publication for opposition of the geographical indication “Grana Padano” to continue using this term, provided these products are not commercialized using references (graphics, names, picture, flags) to the protected European geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product.

#### Gorgonzola

The protection of the geographical indication “Gorgonzola” shall not prevent prior users of “Gorgonzola” in the territory of Brazil<sup>37</sup>, having used the term in good faith prior to the publication for opposition to continue using the term, provided these products are not commercialized using references (graphics, names, pictures, flags) to the genuine origin of the geographical indication and provided the term is displayed in a font character substantially smaller, while readable, than the brand name and in a non-ambiguous manner as regards to the origin of the product.

10. Protected geographical indications listed in Annex II shall not become generic in the territories of the Parties.

11. There shall be no obligation under this Chapter to protect geographical indications which are not or cease to be protected in their place of origin.

12. The provisions of this Chapter shall not prejudice the right of any person to make commercial use of that person’s name or the name of that person’s predecessor in business, except where such name is used in such a manner as to mislead the public.

### *Article X.36*

#### **Right of Use of Geographical Indications**

1. A geographical indication under this Agreement may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirit drinks which conform to the

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<sup>36</sup> List of prior users: to be included before the conclusion of the agreement.

<sup>37</sup> List of prior users: to be included before the conclusion of the agreement.

corresponding specification.

2. Once a geographical indication is protected under this agreement, the use of such protected name shall not be subject to any registration of users, or further charges.

*Article X.37*

**Enforcement of Protection**

The Parties shall provide the legal means for interested parties to seek enforcement of the protection provided for in Articles X.35 via appropriate administrative action by public authorities and via judicial steps, within their own legal system and practise.

*Article X.38*

**General Rules**

Import, export and marketing of products corresponding to the names referred to in Annex II shall be conducted in compliance with the laws and regulations applying in the territory of the Party in which the products are placed on the market.

*Article X.39*

**Cooperation and transparency**

1. The Sub Committee on Intellectual Property established in accordance with Article X.59 shall see to the proper functioning of this Sub-Section and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:

- (a) taking decisions amending Annex I as regards the references to the law applicable in the Parties,
- (b) taking decisions modifying Annex II as regard to geographical indications and exchanging information for that purpose,
- (c) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications,
- (d) cooperating on the development of alternative names for products that were once marketed by producers of a Party with terms corresponding to geographical indications of the other Party, especially in cases subject to a phasing out.

Parties shall notify each other if a geographical indication listed in Annex II ceases to be protected in the territory of the Party concerned. Following such notification, the Sub Committee shall modify Annex II in accordance with Article X.39.3 (b) to end the protection under this Agreement.

Only the Party in which the product originates is entitled to request the end of the protection under this Sub-Section of a geographical indication listed in Annex II.

4. Parties shall, either directly or through the Sub Committee, remain in contact directly on all matters relating to the implementation and the functioning of this Sub-Section. In particular, a Party may request from the other Party information relating to product specifications and their amendments, as well as contact points for control provisions.

5. A product specification referred to in this agreement shall be the one approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates.

6. Parties may make publicly available the product specifications or a summary thereof corresponding to the geographical indications of the other Party protected pursuant to this Sub-Section, in Portuguese, Spanish or English.

### **Sub-Section 5 - Patents**

#### *Article X.40*

#### **International treaties**

The Parties shall make best efforts to adhere to the Patent Cooperation Treaty.<sup>38</sup>

### **Sub-Section 6 - Plant Varieties**

#### *Article X.41*

#### **International Agreements**

Each Party shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants adopted in Paris on 2 December 1961, as revised in Geneva on November 10, 1972, and on October 23, 1978 (1978 UPOV ACT) or on March 19, 1991 (1991 UPOV ACT), and shall cooperate to promote the Protection of Plant Varieties.

### **Sub-Section 7 - Protection of Undisclosed Information**

#### *Article X.42*

#### **Scope of protection of trade secrets**

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<sup>38</sup> For the EU this provision can be fulfilled through adherence of its Member States.

1. In fulfilling its obligation under Article X.1.1 to comply with the TRIPS Agreement, and in particular paragraphs 1 and 2 of Article 39 of the TRIPS Agreement, each Party shall provide for appropriate civil judicial procedures and remedies for any person lawfully in control of a trade secret to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.
2. For the purpose of this subsection:
  - (a) 'trade secret' means information that:
    - (i) 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;
    - (ii) has commercial value because it is secret; and
    - (iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
  - (b) 'trade secret holder' means any natural or legal person lawfully controlling a trade secret.
3. For the purpose of this Sub-section, at least the following conducts shall be considered contrary to honest commercial practices:
  - (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced:
  - (b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
    - (i) having acquired the trade secret unlawfully;
    - (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
    - (iii) being in breach of a contractual or any other duty to limit the use of the trade secret.
  - (c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b).

4. Nothing in this subsection shall be understood as requiring any Party to consider any of the following conducts as contrary to honest commercial practices:

- (a) independent discovery or creation by a person of the relevant information;
- (b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;
- (c) acquisition, use or disclosure of information required or allowed by the relevant domestic law;
- (d) use by employees of their experience and skills honestly acquired in the normal course of their employment.

5. Nothing in this subsection shall be understood as restricting freedom of expression and information, including media freedom as protected in the jurisdiction of each of the Parties.

*Article X.43*

**Civil judicial procedures and remedies of trade secrets**

1. Each party shall ensure that the any person participating in the civil judicial proceedings referred to in Article X.42 (scope of protection of trade secrets) or who has access to documents which form part of those legal proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.

2. In the civil judicial proceedings referred to in Article X.42 (scope of protection of trade secrets), each Party shall provide that its judicial authorities have the authority at least to:

- (a) order provisional measures, as set out in the respective domestic laws and regulations, to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;
- (b) order injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;
- (c) order the person that knew or ought to have known that he, she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of the unlawful acquisition, use or disclosure of the trade secret;
- (d) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in civil proceedings relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices. Such specific measures may include, in accordance with their respective domestic law, the possibility of restricting access to certain documents in whole or in part; of restricting access to hearings and their corresponding records or transcript; and of

making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted.

- (e) impose sanctions on parties, or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of a trade secret or alleged trade secret produced in that proceedings.

3. The Parties shall not be required to provide for the judicial procedures and remedies referred to in Article X.42 (scope of protection of trade secrets) when the conduct contrary to honest commercial practices is carried out, in accordance with their relevant domestic law, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by law.

## **Section C - Enforcement of intellectual property rights**

### **Sub-Section 1 Civil and administrative enforcement**

#### *Article X.44*

#### **General obligations**

1. Each Party reaffirms its commitments under the TRIPS Agreement and in particular under Part III thereof, and shall ensure the enforcement of intellectual property rights in accordance with its domestic law and within its own legal system and practice.
2. For the purposes of this Section unless otherwise provided, intellectual property rights refer to Article X.3.1 of this Chapter with the exception of rights referred to in Articles X.42 and X.43.
3. Procedures<sup>39</sup> adopted, maintained, or applied to implement the provisions of this Chapter shall be effective, fair and equitable shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays, and shall act as a deterrent to further infringements. Each Party shall take into account the need for proportionality among the infringement, the rights of all parties involved, the interests of third parties, and the applicable measures, remedies and penalties.
4. Procedures concerning the enforcement of intellectual property rights 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.
5. It is understood that this Section does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general and according to domestic law, nor does it affect the capacity of the Parties to enforce their law in general.

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<sup>39</sup> For the purposes of this Section, procedures also include measures and remedies.

*Article X.45*

**Persons Entitled to Apply for Procedures**

Each Party shall recognise as persons entitled to seek application of the procedures concerning the enforcement of intellectual property rights referred to in this Section and in Part III of the TRIPS Agreement, in accordance with the domestic law where the procedure takes place at least :

- (a) the holders of intellectual property rights;
- (b) exclusive licensees, in so far as authorized by the right holders; and,
- (c) intellectual property collective rights management bodies which are legally and expressly recognised as having a right to represent holders of intellectual property rights.

*Article X.46*

**Evidence**

1. Each Party shall ensure that, the competent judicial authorities may, on application by a party which 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<sup>40</sup>.
2. Such measures may 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 documents relating thereto, subject to the protection of confidential information.
3. Each Party shall take the measures necessary, in cases of trademark counterfeiting or copyright piracy on a commercial scale<sup>41</sup>, to enable the competent judicial authorities to order, where appropriate, on application by a party, and when necessary to determine the existence and extent of an infringement, the communication of relevant banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.
4. Each Party shall ensure that the judicial authorities have the competence to subject the measures to preserve evidence to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant.
5. Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the

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<sup>40</sup> For the purposes of this Article confidential information may include personal data.

<sup>41</sup> A Party may extend the application of this paragraph to other intellectual property rights.

authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

*Article X.47*

**Right of Information**

1. Each Party shall ensure that, in cases of an infringement of intellectual property rights and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer and/or any other person to provide relevant information on the origin and distribution networks of the infringing goods or services.

- (a) “Any other person” in this paragraph means a person who was:
  - (i) found in possession of the infringing goods on a commercial scale;
  - (ii) found to be using the infringing services on a commercial scale;
  - (iii) found to be providing on a commercial scale services used in infringing activities;  
or
  - (iv) indicated by the person referred to in subparagraph (i) to (iii) as being involved in the production, manufacture or distribution of the goods or the provision of the services.
- (b) Relevant information may include information regarding any person involved on a commercial scale in the infringement or alleged infringement and regarding the means of production and distribution networks of the goods or services.

2. This Article 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 his own involvement or that of his close relatives; or
- (e) govern the protection of confidentiality of information sources or the processing of personal data.

*Article X.48*

**Provisional and Precautionary Measures**

1. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional and precautionary measures, including an interlocutory injunction, against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of an intellectual property right from occurring, and in particular, to prevent infringing goods from entering into the channels of commerce.
2. An interlocutory injunction may also be issued to order the seizure or delivery up of 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 alleged 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 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.
4. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

*Article X.49*

**Remedies**

1. Each Party 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 destruction or at least the definitive removal from the channels of commerce, of goods that they have found to be infringing. Such goods may be used for the public interest. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.
2. The competent judicial authorities of each Party shall have the authority to order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

*Article X.50*

**Injunctions**

Each Party shall ensure that, when a judicial decision finds an infringement, the competent judicial authorities may issue against the infringer or, where appropriate, against a third party over whom

the relevant judicial authority exercises jurisdiction an injunction aimed at prohibiting the continuation of the infringement.

*Article X.51*

**Alternative Measures**

1. Each Party may provide that the judicial authorities, in appropriate cases and upon request of the person liable to be subject to the measures provided for in Article X.49 (Remedies) and/or in this Article X.50 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article X.49 (Remedies) and/or in this Article X.50 (Injunctions), if it is found that the former acted unintentionally and without negligence, or if execution of the measures in question would cause him disproportionate harm or if pecuniary compensation to the injured party appears reasonably satisfactory<sup>42</sup>.

*Article X.52*

**Damages**

1. Each Party shall ensure that the judicial authorities have the authority to, upon request of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages appropriate to the actual prejudice suffered by him/her as a result of the infringement. When the competent 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<sup>43</sup> made by the infringer and, when applicable, 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.

*Article X.53*

**Legal Costs**

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning the enforcement of intellectual property

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<sup>42</sup> In deciding what is “reasonably satisfactory” the judge may take into consideration the public interest.

<sup>43</sup> “Unfair profits” are those derived from the infringement, in accordance with domestic legislation.

rights, that the prevailing party be awarded payment by the losing party of legal costs and other expenses, as provided for under that Party's law.

*Article X.54*

**Publication of Judicial Decisions**

Each Party shall ensure in cases of infringement of an intellectual property right that, unless this would be out of proportion to the seriousness of the infringement, the judicial authorities may order the publication of the decision.

*Article X.55*

**Presumption of Authorship or Ownership**

In at least provisional measures requested in civil proceedings involving copyright, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person or entity whose name is indicated as the author or related right holder of the work or subject matter in the usual manner is the designated right holder in such work or subject matter.

*Article X.56*

**Public awareness**

The Parties shall take the necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

**Sub-Section 2 - Border enforcement**

*Article X.57*

**Consistency with GATT and TRIPS Agreement**

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this Sub-Section, each Party shall ensure consistency with their obligations under the GATT and TRIPS agreements and, in particular, with Article V of GATT agreement, Article 41 and Section 4 of the Part III of TRIPS agreement.

*Article X.58*

**Border Measures**

1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications requesting customs authorities to suspend the release or detain goods suspected of, at least, trademark counterfeiting, copyright and related rights piracy on a commercial scale or infringing of geographical indications (hereinafter referred to as “suspect goods”).
2. There shall be no obligation to apply the procedures set forth in this Sub-Section to goods in transit.
3. Each Party shall encourage the use of electronic systems for the management by customs of the applications granted or recorded.
4. Customs authorities shall inform the applicant within a reasonable period whether they have accepted the application.
5. Each Party shall provide for such application/recording to apply to multiple shipments when so allowed in accordance with the provisions of the domestic law.
6. Each Party may provide that their customs authorities have the authority, with respect to goods under customs control, to act upon their own initiative to suspend the release of or detain suspect goods.
7. Customs authorities may use risk analysis to identify suspect goods.
8. Each Party may have in place administrative or judicial procedures, in accordance with the provisions of the domestic law, allowing for the destruction of goods suspected of trademark counterfeiting or copyright piracy on a commercial scale, where the persons concerned agree or do not oppose to the destruction. In the event that such goods are not destroyed, each Party shall ensure that they are disposed of outside commercial channels in such a manner to avoid any harm to the right holder.
9. There shall be no obligation to apply this Article to import of goods put on the market in another country by or with the consent of the right holders. A Party may exclude from the application of this Article goods of a non-commercial nature contained in travellers’ personal luggage.
10. The customs authorities of each Party shall maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of the intellectual property rights referred to in paragraph 1.
11. The Parties agree to cooperate in respect of international trade in suspect goods and, in particular, to share information on such trade.
12. Without prejudice to other forms of cooperation, the Protocol on Mutual Administrative Assistance in Customs Matters will also be applicable with regard to breaches of legislation on intellectual property rights the enforcement of which falls within the competence of the customs authorities in accordance with this Article.

## **Section D - Final provisions**

### *Article X.59*

#### **Cooperation**

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter in view of Objectives set out in Article X.2 and Principles set out in Article X.4 of this Chapter.
2. The areas of cooperation include, but are not limited to, the following activities:
  - a) The exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;
  - b) The exchange of experience between the Parties on legislative progress;
  - c) The exchange of experience between the Parties on the enforcement of intellectual property rights;
  - d) The exchange of experience between the Parties on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;
  - e) Coordination to prevent exports of counterfeit goods, including with other countries;
  - f) Technical assistance, capacity-building; exchange and training of personnel;
  - g) The protection and defence of intellectual property rights and the dissemination of information in this regard in, inter alia, business circles and civil society;
  - h) Public awareness of consumers and right holders; enhancement of institutional cooperation, particularly between the intellectual property offices;
  - i) Actively promoting awareness and education of the general public on policies concerning intellectual property rights;
  - j) Engaging with SMEs, including at SME-focused events or gatherings, regarding using, protecting and enforcing intellectual property rights;
  - (m) The application of the CBD and related instruments, and the domestic frameworks on

access to genetic resources and associated traditional knowledge, innovations and practices;

- (p) Facilitation of voluntary stakeholder initiatives to reduce intellectual property rights infringement, including over the internet and in other marketplaces;
- (q) The exchange of information related to public domain in their territories.

[3. Without prejudice to paragraph 1 and 2 and to supplement them if necessary, the Parties agree to establish a Sub-Committee on Intellectual Property to follow up on the implementation of the provisions of this Chapter and any other relevant issue. This Sub-Committee shall be co-chaired by officials of both Parties and will meet at least once per year, except if the Parties agree otherwise. These meetings shall be carried out through any agreed means, including by video conference. The Sub-Committee on Intellectual Property will adopt its decisions by consensus. It may also adopt specific rules of procedure, by consensus.]