

- (b) the external economic and trading environment; and
- (c) alternative corrective measures which may be available.

7. The consultations under paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of a statistical or factual nature presented by the International Monetary Fund, where available, shall be accepted and conclusions shall take into account the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the Party concerned.

TITLE V: INTELLECTUAL PROPERTY

Chapter 1: General provisions

Article IP.1: Objectives

The objectives of this Title are to:

- (a) facilitate the production, provision and commercialisation of innovative and creative products and services between the Parties by reducing distortions and impediments to such trade, thereby contributing to a more sustainable and inclusive economy; and
- (b) ensure an adequate and effective level of protection and enforcement of intellectual property rights.

Article IP.2: Scope

1. This Title shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.

2. This Title does not preclude either Party from introducing more extensive protection and enforcement of intellectual property rights than required under this Title, provided that such protection and enforcement does not contravene this Title.

Article IP.3: Definitions

For the purposes of this Title, the following definitions apply:

- (a) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967;
- (b) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 revised at Paris on 24 July 1971 and amended on 28 September 1979;
- (c) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;
- (d) "WIPO" means the World Intellectual Property Organisation;
- (e) "intellectual property rights" means all categories of intellectual property that are covered by Articles IP.7 [Authors] to IP.37 [Protection of plant varieties rights] of this Title or Sections 1 to

7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the Paris Convention;

- (f) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party.

Article IP.4: International agreements

1. The Parties affirm their commitment to comply with the international agreements to which they are party:

- (a) the TRIPS Agreement;
- (b) the Rome Convention;
- (c) the Berne Convention;
- (d) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;
- (e) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996;
- (f) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007;
- (g) the Trademark Law Treaty, adopted at Geneva on 27 October 1994;
- (h) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June 2013;
- (i) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.

2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:

- (a) the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012;
- (b) the Singapore Treaty on the Law of Trademarks adopted at Singapore on 27 March 2006.

Article IP.5: Exhaustion

This Title does not affect the freedom of the parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.

Article IP.6: National treatment

1. In respect of all categories of intellectual property covered by this Title, each Party shall accord to the nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property subject where applicable to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, done at

Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Agreement.

2. For the purposes of paragraph 1 of this Article, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Title, including measures to prevent the circumvention of effective technological measures as referred to in Article IP.16 [Protection of technological measures] and measures concerning rights management information as referred to in Article IP.17 [Obligations concerning rights management information].

3. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, if such exceptions are:

- (a) necessary to secure compliance with the Party's laws or regulations which are not inconsistent with this Title; or
- (b) not applied in a manner which would constitute a disguised restriction on trade.

4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Chapter 2: Standards concerning intellectual property rights

Section 1: Copyright and related rights

Article IP.7: Authors

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

- (a) direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;
- (b) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof;
- (c) 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;
- (d) the commercial rental to the public of originals or copies of their works; each Party may provide that this point does not apply to buildings or works of applied art.

Article IP.8: Performers

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

- (a) the fixation of their performances;
- (b) 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;
- (c) the distribution to the public, by sale or otherwise, of the fixations of their performances;

- (d) the making available to the public of fixations of their performances, 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;
- (e) 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;
- (f) the commercial rental to the public of the fixation of their performances.

Article IP.9: Producers of phonograms

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

- (a) the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of their phonograms;
- (b) the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;
- (c) the making available to the public of their phonograms, 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;
- (d) the commercial rental of their phonograms to the public.

Article IP.10: Broadcasting organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

- (a) the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (b) 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, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those 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;
- (d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (e) the rebroadcasting of their broadcasts by wireless 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 IP.11: 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 single equitable 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 or any communication to the public.
2. Each Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. 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 the single equitable remuneration.
3. Each Party may grant more extensive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

Article IP.12: Term of protection

1. The rights of an author of a work shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public.
2. For the purpose of implementing paragraph 1, each Party may provide for specific rules on the calculation of the term of protection of musical composition with words, works of joint authorship as well as cinematographic or audiovisual works. Each Party may provide for specific rules on the calculation of the term of protection of anonymous or pseudonymous works.
3. The rights of broadcasting organisations shall expire 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.
4. The rights of performers for their performances otherwise than in phonograms shall expire 50 years after the date of the fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 50 years from the first such publication or communication to the public, whichever is the earlier.
5. The rights of performers for their performances fixed in phonograms shall expire 50 years after the date of fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 70 years from such act, whichever is the earlier.
6. The rights of producers of phonograms shall expire 50 years after the fixation is made or, if lawfully published to the public during this time, 70 years from such publication. In the absence of a lawful publication, if the phonogram has been lawfully communicated to the public during this time, the term of protection shall be 70 years from such act of communication. Each Party may provide for effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.
7. The terms laid down in this Article shall be counted from the first of January of the year following the year of the event which gives rise to them.
8. Each Party may provide for longer terms of protection than those provided for in this Article.

Article IP.13: Resale right

1. Each Party shall provide, for the benefit of the author of an original work of graphic or plastic 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. Each Party 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 procedure for collection of the remuneration and their amounts shall be determined by the law of each Party.

Article IP.14: Collective management of rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in their respective territories and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.
2. The Parties shall promote the transparency of collective management organisations, in particular regarding the rights revenue they collect, the deductions they apply to the rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.
3. The Parties shall endeavour to facilitate arrangements between their respective collective management organisations on non-discriminatory treatment of right holders whose rights these organisations manage under representation agreements.
4. The Parties shall cooperate to support the collective management organisations established in their territory and representing another collective management organisation established in the territory of the other Party by way of a representation agreement with a view to ensuring that they accurately, regularly and diligently pay amounts owed to the represented collective management organisations and provide the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to that rights revenue.

Article IP.15 Exceptions and limitations

Each Party shall confine limitations or exceptions to the rights set out in Articles IP.7 [Authors] to IP.11 Article [Broadcasting and communication to the public of phonograms published for commercial purposes] to 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.

Article IP.16: Protection of technological measures

1. Each Party 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. Each Party may provide for a specific regime for legal protection of technological measures used to protect computer programs.

2. Each Party 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;
- (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 facilitating the circumvention of, any effective technological measures.

3. For the purposes of this Section, 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 related right covered by this Section. 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. Notwithstanding the legal protection provided for in paragraph 1 of this Article, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article IP.15 [Exceptions and limitations] from enjoying such exceptions or limitations.

Article IP.17: 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 pursuant to this Section 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 or she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by the law of a Party.

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 Article, 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 applies if 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.

Section 2: Trade marks

Article IP.18: Trade mark classification

Each Party shall maintain a trade mark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as amended and revised.

Article IP.19: Signs of which a trade mark may consist

A trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

- (a) distinguishing the goods or services of one undertaking from those of other undertakings; and
- (b) being represented on the respective trade mark register of each Party, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

Article IP.20: Rights conferred by a trade mark

1. Each Party shall provide that the registration of a trade mark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having the proprietor's consent from using in the course of trade:

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

2. The proprietor of a registered trade mark shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Party where the trade mark is registered without being released for free circulation there, where such goods, including packaging, come from other countries or the other Party and bear without authorisation a trade mark which is identical to the trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark.

3. The entitlement of the proprietor of a trade mark pursuant to paragraph 2 shall lapse if during the proceedings to determine whether the registered trade mark has been infringed, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

Article IP.21: Registration procedure

1. Each Party shall provide for a system for the registration of trade marks in which each final negative decision taken by the relevant trade mark administration, including partial refusals of registration, shall be communicated in writing to the relevant party, duly reasoned and subject to appeal.

2. Each Party shall provide for the possibility for third parties to oppose trade mark applications or, where appropriate, trade mark registrations. Such opposition proceedings shall be adversarial.
3. Each Party shall provide a publicly available electronic database of trade mark applications and trade mark registrations.
4. Each Party shall make best efforts to provide a system for the electronic application for and processing, registration and maintenance of trade marks.

Article IP.22: Well-known trade marks

For the purpose of giving effect to protection of well-known trade marks, as referred to in Article 6*bis* of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply 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 IP.23: Exceptions to the rights conferred by a trade mark

1. Each Party shall provide for limited exceptions to the rights conferred by a trade mark such as the fair use of descriptive terms including geographical indications, and may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the proprietor of the trade mark and of third parties.
2. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:
 - (a) the name or address of the third party, where the third party is a natural person;
 - (b) signs or 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; or
 - (c) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts,provided the third party uses them in accordance with honest practices in industrial or commercial matters.
3. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Party in question and is used within the limits of the territory in which it is recognised.

Article IP.24: Grounds for revocation

1. Each Party shall provide that a trade mark shall be liable to revocation if, within a continuous period of five years it has not been put to genuine use in the relevant territory of a Party by the proprietor or with the proprietor's consent in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.

2. Each Party shall also provide that a trade mark shall be liable to revocation if within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the relevant territory by the proprietor or with the proprietor's consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.

3. However, no person may claim that the proprietor's rights in a trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trade mark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.

4. A trade mark shall also be liable to revocation if, after the date on which it was registered:

- (a) as a consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered;
- (b) as a consequence of the use made of the trade mark by the proprietor of the trade mark or with the proprietor's consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

Article IP.25: The right to prohibit preparatory acts in relation to the use of packaging or other means

Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trade mark is affixed could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of the trade mark, the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

- (a) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed; or
- (b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

Article IP.26: Bad faith applications

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

Section 3: Design

Article IP.27: Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new and original. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Section.

For the purposes of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the protected design or using articles bearing or embodying the protected design where such acts are undertaken for commercial purposes.

3. 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 original:

- (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 originality.

4. For the purposes of point (a) of paragraph 3, "normal use" means use by the end user, excluding maintenance, servicing or repair work.

Article IP.28: Duration of protection

The duration of protection available for registered designs, including renewals of registered designs, shall amount to a total term of 25 years from the date on which the application was filed³⁶.

Article IP.29: Protection of unregistered designs

1. Each Party shall confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory³⁷. Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product.

2. The duration of protection available for the unregistered design shall amount to at least three years as from the date on which the design was first made available to the public in the territory of the respective Party.

Article IP.30: Exceptions and exclusions

1. Each Party may provide limited exceptions to the protection of designs, including unregistered designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of designs, and do not unreasonably prejudice the legitimate interests of the holder of the design, taking account of the legitimate interests of third parties.

2. Protection shall not extend to designs solely dictated by technical or functional considerations. A design 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

³⁶ Each Party may determine the relevant date of filing of the application in accordance with its own legislation.

³⁷ This section does not apply to the protection known in the United Kingdom as a design right.

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. By way of derogation from paragraph 2, a design shall, in accordance with the conditions set out in Article IP.27(1) [Protection of registered designs], subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

Article IP.31: Relationship to copyright

Each Party shall ensure that designs, including unregistered designs, shall also be eligible for protection under the copyright law 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.

Section 4: Patents

Article IP.32: Patents and public health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Ministerial Conference of the WTO at Doha (the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Section, each Party shall ensure consistency with the Doha Declaration.

2. Each Party shall implement Article 31*bis* of the TRIPS Agreement, as well as the Annex to the TRIPS Agreement and the Appendix to the Annex to the TRIPS Agreement.

Article IP.33: Extension of the period of protection conferred by a patent on medicinal products and on plant protection products

1. The Parties recognise that medicinal products and plant protection products³⁸ protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their respective markets. The Parties recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on the market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.

2. Each Party shall provide for further protection, in accordance with its laws and regulations, for a product which is protected by a patent and which has been subject to an administrative authorisation procedure referred to in paragraph 1 to compensate the holder of a patent for the reduction of effective patent protection. The terms and conditions for the provision of such further protection, including its length, shall be determined in accordance with the laws and regulations of the Parties.

3. For the purposes of this Title, "medicinal product" means:

³⁸ For the purposes of this Title, the term "plant protection product" shall be defined for each Party by the respective legislations of the Parties.

- (a) any substance or combination of substances presented as having properties for treating or preventing disease in human beings or animals; or
- (b) any substance or combination of substances which may be used in or administered to human beings or animals either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.

Section 5: Protection of undisclosed information

Article IP.34: Protection of trade secrets

1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder 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 purposes of this Section:

- (a) "trade secret" means information which meets all of the following requirements:
 - (i) it 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) it has commercial value because it is secret; and
 - (iii) it 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 purposes of this Section, at least the following conduct shall be considered contrary to honest commercial practices:

- (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever obtained by unauthorised access to, or by appropriation or copying of, any documents, objects, materials, substances or electronic files that are lawfully under the control of the trade secret holder, and that contain the trade secret or from which the trade secret can be deduced;
- (b) the use or disclosure of a trade secret whenever it is 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 in a manner referred to in point (a);
 - (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 to have known, under the

circumstances 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 Section shall be understood as requiring either Party to consider any of the following conducts as contrary to honest commercial practices:

- (a) independent discovery or creation;
- (b) the reverse engineering of a product that has been made available to the public or that is lawfully in the possession of the acquirer of the information, where the acquirer of the information is free from any legally valid duty to limit the acquisition of the trade secret;
- (c) the acquisition, use or disclosure of a trade secret required or allowed by the law of each Party;
- (d) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the laws and regulations of that Party.

5. Nothing in this Section shall be understood as affecting the exercise of freedom of expression and information, including the freedom and pluralism of the media, as protected in each Party, restricting the mobility of employees, or as affecting the autonomy of social partners and their right to enter into collective agreements, in accordance with the laws and regulations of the Parties.

Article IP.35: Protection of data submitted to obtain an authorisation to put a medicinal product on the market

1. Each Party shall protect commercially confidential information submitted to obtain an authorisation to place medicinal products on the market ("marketing authorisation") against disclosure to third parties, unless steps are taken to ensure that the data are protected against unfair commercial use or except where the disclosure is necessary for an overriding public interest.

2. Each Party shall ensure that for a limited period of time to be determined by its domestic law and in accordance with any conditions set out in its domestic law, the authority responsible for the granting of a marketing authorisation does not accept any subsequent application for a marketing authorisation that relies on the results of pre-clinical tests or clinical trials submitted in the application to that authority for the first marketing authorisation, without the explicit consent of the holder of the first marketing authorisation, unless international agreements to which the Parties are both party provide otherwise.

3. Each Party shall also ensure that, for a limited period of time to be determined by its domestic law and in accordance with any conditions set out in its domestic law, a medicinal product subsequently authorised by that authority on the basis of the results of the pre-clinical tests and clinical trials referred to in paragraph 2 is not placed on the market without the explicit consent of the holder of the first marketing authorisation, unless international agreements to which the Parties are both party provide otherwise.

4. This Article is without prejudice to additional periods of protection which each Party may provide in that Party's law.

Article IP.36: Protection of data submitted to obtain marketing authorisation for plant protection products or biocidal products

1. Each Party shall recognise a temporary right of the owner of a test or study report submitted for the first time to obtain a marketing authorisation concerning safety and efficacy of an active substance, plant protection product or biocidal product. During such period, the test or study report shall not be used for the benefit of any other person who seeks to obtain a marketing authorisation for an active substance, plant protection product or biocidal product, unless the explicit consent of the first owner has been proved. For the purposes of this Article, that right is referred to as data protection.
2. The test or study report submitted for marketing authorisation of an active substance or plant protection product 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.
3. The period of data protection shall be at least 10 years from the grant of the first authorisation by a relevant authority in the territory of the Party.
4. Each Party shall ensure that the public bodies responsible for the granting of a marketing authorisation will not use the information referred to in paragraphs 1 and 2 for the benefit of a subsequent applicant for any successive marketing authorisation, regardless whether or not it has been made available to the public.
5. Each Party shall establish rules to avoid duplicative testing on vertebrate animals.

Section 6: Plant varieties

Article IP.37: Protection of plant varieties rights

Each Party shall protect plant varieties rights in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on 19 March 1991. The Parties shall cooperate to promote and enforce these rights.

Chapter 3: Enforcement of intellectual property rights

Section 1: General provisions

Article IP.38: General obligations

1. Each Party shall provide under its respective law for the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.

For the purposes of Sections 1, 2 and 4 of this Chapter, the term "intellectual property rights" does not include rights covered by Section 5 of Chapter 2 [Protection of undisclosed information].

2. The measures, procedures and remedies referred to in paragraph 1 shall:

- (a) be fair and equitable;
- (b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;
- (c) be effective, proportionate and dissuasive;
- (d) 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 IP.39: Persons entitled to apply for the application of the measures, procedures and remedies

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in Sections 2 and 4 of this Chapter:

- (a) the holders of intellectual property rights in accordance with the law of a Party;
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of a Party; and
- (c) federations and associations³⁹, in so far as permitted by and in accordance with the law of a Party.

Section 2: Civil and administrative enforcement

Article IP.40: Measures for preserving evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support their claims that their 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 appropriate safeguards and the protection of confidential information.

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 materials and implements used in the production and/or distribution of these goods and the documents relating thereto.

Article IP.41: Evidence

1. Each Party shall take the measures necessary to enable the competent judicial authorities to order, on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, that this evidence be produced by the opposing party, subject to the protection of confidential information.

³⁹ For greater certainty, and in so far as permitted by the law of a Party, the term "federations and associations" includes at least collective rights management bodies and professional defence bodies which are regularly recognised as having the right to represent holders of intellectual property rights.

2. Each Party shall also take the necessary measures to enable the competent judicial authorities to order, where appropriate, in cases of infringement of an intellectual property right committed on a commercial scale, under the same conditions as in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article IP.42: Right of information

1. Each Party shall ensure that, in the context of civil 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 the infringer or any other person to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

2. For the purposes of paragraph 1, "any other person" means a 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 points (a), (b) or (c), as being involved in the production, manufacture or distribution of the goods or the provision of the services.

3. 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.

4. Paragraphs 1 and 2 shall apply without prejudice to other laws of a Party which:

- (a) grant the right holder rights to receive fuller information;
- (b) govern the use in civil 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 their own participation or that of their close relatives in an infringement of an intellectual property right;
- (e) govern the protection of confidentiality of information sources or the processing of personal data.

Article IP.43: Provisional and precautionary measures

1. Each Party shall ensure that its judicial authorities may, at the request of the applicant, issue against the alleged infringer 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 the law of that Party, 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. Each Party shall ensure that its judicial authorities may, at the request of the applicant, 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, each Party 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 their 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. Each Party shall ensure that its judicial authorities shall, in respect of the measures referred to in paragraphs 1, 2 and 3, 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 rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

Article IP.44: Corrective measures

1. Each Party shall ensure that its judicial authorities may order, at the request of the applicant, without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction of goods that they have found to be infringing an intellectual property right or at least the definitive removal of those goods from the channels of commerce. If appropriate, under the same conditions, the judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party's judicial authorities shall have the authority to order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article IP.45: Injunctions

Each Party 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. Each Party shall also ensure that the judicial authorities may issue an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

Article IP.46: Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article IP.44 [Corrective measures] or Article IP.45 [Injunctions], may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause the person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article IP.47: Damages

1. Each Party shall ensure that its judicial authorities, on application of the injured party, order the infringer who knowingly engaged, or had reasonable grounds to know it was engaging, in an infringing activity, to pay to the rightholder damages appropriate to the actual prejudice suffered by the rightholder as a result of the infringement.
2. Each Party shall ensure that when its judicial authorities set the damages:
 - (a) they 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 point (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.
3. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

Article IP.48: Legal costs

Each Party 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 IP.49: Publication of judicial decisions

Each Party 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.

Article IP.50: Presumption of authorship or ownership

For the purposes of applying the measures, procedures and remedies provided for in Chapter 3 [Enforcement of intellectual property 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 the author's name to appear on the work in the usual manner; and
- (b) point (a) applies *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

Article IP.51: Administrative procedures

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

Section 3: Civil judicial procedures and remedies of trade secrets

Article IP.52: Civil judicial procedures and remedies of trade secrets

1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in Article IP.34(1) [Scope of protection of trade secrets], or who has access to documents which form part of those 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. Each Party shall ensure that the obligation referred to in paragraph 1 remains in force after the civil judicial proceedings have ended, for as long as appropriate.
3. In the civil judicial proceedings referred to Article IP.34(1) [Scope of protection of trade secrets], each Party shall provide that its judicial authorities have the authority at least to:
 - (a) order provisional measures, in accordance with their respective laws and regulations, to cease and prohibit the use or disclosure of the trade secret in a manner contrary to honest commercial practices;
 - (b) order measures, in accordance with their respective laws and regulations, ordering the cessation of, or as the case may be, the prohibition of the use or disclosure of the trade secret in a manner contrary to honest commercial practices;
 - (c) order, in accordance with their respective laws and regulations, any person who has acquired, used or disclosed a trade secret in a manner contrary to honest commercial practices and that knew or ought to have known that he or 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 such acquisition, use or disclosure of the trade secret;
 - (d) take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in proceedings as referred to in Article IP.34(1) [Scope of protection of trade secrets]. Such specific measures may include, in accordance with each Party's respective laws and regulations, including the rights of defence, 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 any person participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.

4. Each Party shall ensure that an application for the measure, procedures or remedies provided for in this Article is dismissed where the alleged acquisition, use or disclosure of a trade secret contrary to honest commercial practices was carried out, in accordance with its laws and regulations:

- (a) to reveal misconduct, wrongdoing or illegal activity for the purpose of protecting the general public interest;
- (b) as a disclosure by employees to their representatives as part of, and necessary for, the legitimate exercise by those representatives of their functions;
- (c) to protect a legitimate interest recognised by the laws and regulations of that Party.

Section 4: Border enforcement

Article IP.53: 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 to a competent authority⁴⁰ to suspend the release of or detain suspected goods. For the purposes of this Section, "suspected goods" means goods suspected of infringing trade marks, copyrights and related rights, geographical indications, patents, utility models, industrial designs, topographies of integrated circuits and plant variety rights.

2. Each Party shall have in place electronic systems for the management by customs of the applications granted or recorded.

3. Each Party shall ensure that its competent authorities do not charge a fee to cover the administrative costs resulting from the processing of an application or a recordation.

4. Each Party shall ensure that its competent authorities decide about granting or recording applications within a reasonable period of time.

5. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.

6. With respect to goods under customs control, each Party shall ensure that its customs authorities may act upon their own initiative to suspend the release of or detain suspected goods.

7. Each Party shall ensure that its customs authorities use risk analysis to identify suspected goods.

8. Each Party may authorise its customs authority to provide a right holder, upon request, with information about goods, including a description and the actual or estimated quantities thereof, and if known, the name and address of the consignor, importer, exporter or consignee, and the country of origin or provenance of the goods, whose release has been suspended, or which have been detained.

9. Each Party shall have in place procedures allowing for the destruction of suspected goods, without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, where the persons concerned agree or do not oppose the destruction. In case suspected goods are not destroyed, each Party shall ensure that, except in

⁴⁰ For the European Union the competent authority means the customs authorities.

exceptional circumstances, such goods are disposed of outside the commercial channel in a manner which avoids any harm to the right holder.

10. Each Party shall have in place procedures allowing for the swift destruction of counterfeit trade mark and pirated goods sent in postal or express couriers' consignments.

11. Each Party shall provide that, where requested by the customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the goods, including storage, handling, and any costs relating to the destruction or disposal of the goods.

12. Each Party may decide not to apply this Article to the 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.

13. Each Party shall allow its customs authorities to maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.

14. The Parties shall cooperate in respect of international trade in suspected goods. In particular, the Parties shall, as far as possible, share relevant information on trade in suspected goods affecting the other Party.

15. Without prejudice to other forms of cooperation, the Protocol on mutual administrative assistance in customs matters applies with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities of a Party are competent in accordance with this Article.

Article IP.54: Consistency with GATT 1994 and the TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this Section, the Parties shall ensure consistency with their obligations under GATT 1994 and the TRIPS Agreement and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.

Chapter 4: Other provisions

Article IP.55: Cooperation

1. The Parties shall cooperate with a view to supporting the implementation of the commitments and obligations undertaken under this Title.

2. The areas of cooperation include, but are not limited to, the following activities:

- (a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;
- (b) exchange of experience on legislative progress, on the enforcement of intellectual property rights and on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;

- (c) coordination to prevent exports of counterfeit goods, including coordination with other countries;
- (d) technical assistance, capacity building, exchange and training of personnel;
- (e) protection and defence of intellectual property rights and the dissemination of information in this regard in, among others, to business circles and civil society;
- (f) public awareness of consumers and right holders;
- (g) the enhancement of institutional cooperation, particularly between the intellectual property offices of the Parties;
- (h) educating and promoting awareness among the general public regarding policies concerning the protection and enforcement of intellectual property rights;
- (i) the promotion of protection and enforcement of intellectual property rights with public-private collaboration involving small and medium-size enterprises;
- (j) the formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness of the impact of intellectual property rights' violations, including the risk to health and safety and the connection to organised crime.

3. The Parties shall, either directly or through the Trade Specialised Committee on Intellectual Property, maintain contact on all matters related to the implementation and functioning of this Title.

Article IP.56: Voluntary stakeholder initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringement, including online and in other marketplaces focusing on concrete problems and seeking practical solutions that are realistic, balanced proportionate and fair for all concerned including in the following ways:

- (a) each Party shall endeavour to convene stakeholders consensually in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement;
- (b) the Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories; and
- (c) the Parties shall endeavour to promote open dialogue and cooperation among the Parties' stakeholders, and to encourage the Parties' stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement.

Article IP.57: Review in relation to geographical indications

Noting the relevant provisions of any earlier bilateral agreement between the United Kingdom of the one part and the European Union and European Atomic Energy Community of the other part, the Parties may jointly use reasonable endeavours to agree rules for the protection and effective domestic enforcement of their geographical indications.