

Chapter 11 Intellectual Property

Article 107 General Provisions

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of their respective intellectual property protection systems and provide for measures for adequate and effective enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.

2. "Intellectual property" referred to in this Chapter means all categories of intellectual property:

- (a) that are subject of Articles 114 to 121; and/or
- (b) that are covered by the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.

3. The Parties reaffirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Parties are parties at the date of entry into force of this Agreement and any amendment thereto which becomes effective for both Parties, including the following:

- (a) the TRIPS Agreement;
- (b) the Paris Convention for the Protection of Industrial Property done at Paris on 20 March 1883, as revised at Brussels on 14 December 1900, at Washington on 2 June 1911, at The Hague on 6 November 1925, at London on 2 June 1934, at Lisbon on 31 October 1958, and at Stockholm on 14 July 1967 and as amended on 28 September 1979 (hereinafter referred to as "the Paris Convention");
- (c) the Patent Cooperation Treaty done at Washington on 19 June 1970, amended on 28 September 1979, modified on 3 February 1984, and on 3 October 2001;
- (d) the Strasbourg Agreement Concerning the International Patent Classification done at

Strasbourg on 24 March 1971, as amended on 28 September 1979;

- (e) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure done at Budapest on 28 April 1977, and amended on 26 September 1980;
- (f) the 1991 Act of the International Convention for the Protection of New Varieties of Plants of 2 December 1961 as revised at Geneva on 10 November 1972, on 23 October 1978, and on 19 March 1991 (hereinafter referred to as "the 1991 UPOV Convention");
- (g) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989 and amended on 3 October 2006;
- (h) the Trademark Law Treaty adopted at Geneva on 27 October 1994;
- (i) 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 revised at Stockholm on 14 July 1967, and at Geneva on 13 May 1977, and amended on 28 September 1979;
- (j) the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods done at Madrid on 14 April 1891;
- (k) the Berne Convention for the Protection of Literary and Artistic Works done at Berne on 9 September 1886, completed at Paris on 4 May 1896, revised at Berlin on 13 November 1908, completed at Berne on 20 March 1914, revised at Rome on 2 June 1928, at Brussels on 26 June 1948, at Stockholm on 14 July 1967 and at Paris on 24 July 1971 and amended on 28 September 1979 (hereinafter referred to as "the Berne Convention");
- (l) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961 (hereinafter referred to as "the Rome Convention");
- (m) the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms done at Geneva on 29 October 1971;

- (n) WIPO Copyright Treaty adopted in Geneva on 20 December 1996; and
- (o) WIPO Performances and Phonograms Treaty adopted in Geneva on 20 December 1996 (hereinafter referred to as "the WPPT").

4. In common recognition of the importance of the following multilateral agreements for international efforts to protect intellectual property, each Party seeks to ratify or accede to the following multilateral agreements to which it is not yet a party:

- (a) the Patent Law Treaty adopted at Geneva on 1 June 2000;
- (b) the Singapore Treaty on the Law of Trademarks adopted in Singapore on 27 March 2006; and
- (c) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted by the Diplomatic Conference on 2 July 1999.

Article 108 National Treatment

1. Each Party shall accord to 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 in accordance with Articles 3 and 5 of the TRIPS Agreement.

2. For the purposes of this Article and Article 109, "nationals" shall have the same meaning as in the TRIPS Agreement, and "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.

Article 109 Most-Favoured-Nation Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favourable than the treatment it accords to the nationals of a non-Party with regard to the protection of intellectual property in accordance with Articles 4 and 5 of the TRIPS Agreement.

2. Paragraph 1 shall not be so construed as to oblige either Party to accord to the nationals of the other Party any treatment accorded to the nationals of a non-Party by virtue of any agreement on the avoidance of double taxation.

Article 110

Enhancement of Efficiency of Procedural Matters

For the purposes of providing efficient administration of intellectual property protection system, each Party shall take appropriate measures to enhance the efficiency of its administrative procedures concerning intellectual property.

Article 111

Acquisition of Intellectual Property Rights

1. Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party shall ensure that, irrespective of whether an application for the granting or registration of an intellectual property right is filed as a national or as an international application under the applicable international agreements, the procedures for granting or registration of the right, subject to compliance with the substantive conditions for acquisition 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.

2. Each Party shall make its practice regarding the examination of the indications of designated products and services under the classes applied in trademark applications as transparent as possible.

Article 112

Transparency

For the purposes of further promoting transparency in the administration of its intellectual property protection system, each Party shall take appropriate measures available to the extent possible under its laws and regulations to:

(a) publish information on:

- (i) applications for and grant of patents;
- (ii) registrations of utility models and industrial designs;

- (iii) registrations of trademarks and applications therefor;
- (iv) registrations of layout-designs of integrated circuits; and
- (v) registrations of new varieties of plants and applications therefor,

and make available to the public information contained in the dossiers thereof;

- (b) make available to the public information on applications for the suspension by the competent authorities of the release of products infringing intellectual property rights as a border measure; and
- (c) make available to the public information on its efforts to ensure effective enforcement of intellectual property rights and other information with regard to its intellectual property protection system.

Article 113

Promotion of Public Awareness Concerning Protection of Intellectual Property

The Parties shall take 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.

Article 114

Copyrights and Related Rights

1. Without prejudice to the obligations set out in the international agreements to which both Parties are parties, each Party shall, in accordance with its laws and regulations, grant and ensure adequate and effective protection to the authors of works and to performers, producers of phonograms and broadcasting organisations for their works, performances, phonograms and broadcasts, respectively.

2. In addition to the protection provided for in paragraph 1, each Party shall grant and ensure protection as provided for in Articles 5 and 6 of the WPPT to performers for their visual performances.

3. Each Party shall ensure that a broadcasting organisation in the Party has at least the exclusive right of authorising the following acts: the fixation, the reproduction of fixations, and the making available to the public of its broadcasts 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.

4. Each Party may, in its national legislation, provide for the same kinds of limitations or exceptions as in Article 16 of the WPPT with regard to the protection of performers for their visual performances and to the protection of broadcasting organisations, to the extent that such limitations and exceptions are compatible with the Rome Convention.

5. Each Party shall ensure that the author has the right, independently of the author's economic rights, and even after the transfer of the said rights, to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his or her honour or reputation.

6. The rights granted to the author in accordance with paragraph 5 shall, after his or her death, be maintained at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the Party in which protection is claimed.

7. The rights granted under paragraphs 5 and 6 shall be granted, *mutatis mutandis*, to performers as regards their live aural or visual performances, or performances fixed in phonograms or audiovisual fixations.

8. Each Party shall ensure that the general term of protection granted for works is the life of the author and at least 50 years after his or her death.

9. Each Party shall ensure that the term of protection for related rights, as well as for copyrights whose term of protection is calculated on a basis other than the life of a natural person, is no less than 50 years:

- (a) after the authorised publication, or, failing such authorised publication within 50 years after the making of the work, no less than 50 years after the making, for works;
- (b) after the authorised publication, or, failing such publication within 50 years after the fixation of the phonogram, no less than 50 years after the fixation, for phonograms;
- (c) after the performance, for performances; or
- (d) after the broadcast, for broadcasts.

10. For certain categories of works, each Party shall provide that the term of protection is the life of the author and no less than 70 years after his or her death, or no less than 70 years after the authorised publication, or, failing such authorised publication within 70 years after the making of the work, no less than 70 years after the making.

11. A Party may be exempted from its obligations under this Article where the exemptions as provided for in Articles 7 and 7bis of the Berne Convention may apply.

12. Each Party shall ensure non-discriminatory treatment for owners of copyright in the other Party with regard to the enjoyment and the exercise of copyrights, regardless of whether such copyrights are registered under the applicable laws and regulations of the former Party.

Article 115 Trademarks

1. Any sign, or any combination of signs, capable of distinguishing the products or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements, three-dimensional shapes and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant products or services, each Party may make eligibility for registration depend on distinctiveness acquired through use. Each Party may require, as a condition of registration, that signs be visually perceptible.

2. Each Party shall protect well-known marks in accordance with Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement.

3. The Parties reaffirm the importance of 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 World Intellectual Property Organization (hereinafter referred to as "the WIPO") in 1999 in furtherance of protection of well-known marks and the Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 2001 in furtherance of protection of signs on the Internet.

4. Each Party shall ensure that the owner of a registered trademark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for products or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. For the purposes of this paragraph, "using" such sign includes, at least, importing and exporting products or packages of products to which the sign is affixed.

5. Paragraph 4 shall also apply if only small quantities of products are imported or exported, as long as the import or export constitutes an infringement of the right conferred by a registered trademark under the laws and regulations of a Party. In case of the use of an identical sign for identical products or services, a likelihood of confusion shall be presumed. The rights described in paragraph 4 shall not prejudice any existing prior rights, nor shall they affect the possibility of the Parties making rights available on the basis of use.

Article 116 Industrial Designs

1. Each Party shall ensure that adequate and effective protection is provided to industrial designs, including to designs of a part of an article.

2. Each Party shall ensure that the owner of a protected industrial design has the right to prevent third parties not having the owner's consent from making, selling, importing or exporting articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design when such acts are undertaken for commercial purposes.

3. Paragraph 2 shall also apply if only small quantities of products are imported or exported, as long as the import or export constitutes an infringement of the right conferred by the protected industrial design under the laws and regulations of a Party.

4. Each Party shall ensure that the term of protection available is no less than 20 years.

Article 117 Patents

1. Subject to paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, including in the field of biotechnology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 3, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Each Party may exclude from patentability inventions, the prevention of the commercial exploitation of which within the Party is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.

3. Each Party may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals, with the exception of products consisting of a substance or a composition for use in any such method; and
- (b) plant and animal varieties other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

4. Each Party shall ensure that a patent confers on its owner exclusive rights:

- (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from making, using, offering for sale, selling, importing for these purposes or exporting that product; and
- (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from using the process, and from using, offering for sale, selling, importing for these purposes or exporting at least the product obtained directly by that process.

5. With respect to the patent which is granted for an invention related to pharmaceuticals or plant protection products, each Party shall, subject to the terms and conditions of its applicable laws and regulations, provide for a compensatory term of protection for any period during which the patented invention cannot be worked due to marketing approval process.

6. For the purposes of paragraph 5:

- (a) "compensatory term of protection" means, for Japan, an extension of a term of patent protection and, for Switzerland, a term specified in a supplementary protection certificate;
- (b) "marketing approval" means approval or any other disposition by the competent authorities that is intended to ensure the safety and, where applicable, efficacy of the pharmaceuticals or plant protection products as provided for in the relevant laws and regulations of each Party; and
- (c) the length of the compensatory term of protection shall be:
 - (i) for Japan, equal to the length of extension which the patentee requests, provided that the compensatory term of protection shall not exceed either the length of time during which the patented invention cannot be worked due to marketing approval processes, or a maximum term as provided for in the laws and regulations of Japan. As of the date of entry into force of this Agreement, such maximum term is stipulated as being five years by the relevant law of Japan; and

- (ii) for Switzerland, equal to the period which elapsed between the filing date of the patent application and the date of the marketing approval of the product, reduced by a period of five years. The maximum compensatory term shall be at least five years.

Article 118 New Varieties of Plants

Each Party shall provide the same level of protection for new varieties of all plant genera and species as provided under the 1991 UPOV Convention.

Article 119 Geographical Indications and Related Indications

1. Each Party shall ensure adequate and effective protection of geographical indications and related indications in accordance with this Article.
2. For the purposes of this Chapter:
 - (a) "geographical indications" means indications which identify a product as originating in a Party, or a region or locality in that Party, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin; and
 - (b) "related indications" means:
 - (i) indications in the designation or presentation of a service that contain or consist of the name of a geographical place of a Party (hereinafter referred to in this Article as "indications of services"); and
 - (ii) the country name of a Party, the name of a canton of Switzerland, armorial bearings, flags and other State or regional emblems.
3. (a) In respect of geographical indications, each Party shall provide the legal means for interested parties to prevent:

- (i) the use of any elements in the designation or presentation of a product that indicate or suggest that the product in question originates in a geographical place other than the true place of origin in a manner which misleads the public as to the geographical origin of the product;
- (ii) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention; and
- (iii) any use of a geographical indication identifying wines for wines or identifying spirits for spirits not originating in the place indicated by the geographical indication in question.

Note: Nothing in this Article shall be so construed as to derogate from any obligation of a Party under subparagraph (iii). The Parties may, with respect to subparagraph (iii), provide for enforcement by administrative action instead of judicial procedures.

- (b) Each Party shall provide the legal means for interested parties to prevent the use of any indications of services in a manner, as prescribed in applicable laws and regulations of the Party, that misleads the public.
- (c) Each Party shall provide the legal means for interested parties to prevent the use of the country name of either Party or the name of a canton of Switzerland for a product or service in a manner, as prescribed in applicable laws and regulations of the Party, that misleads the public.

- (d) Each Party shall provide the legal means for interested parties to prevent the use of the geographical indication, the indications of services, the country name of either Party, or the name of a canton of Switzerland, even where the true origin of the products is indicated, or where they are used in translation or accompanied by terms such as "kind", "type", "style", "way", "imitation", "method" or other analogous expressions, if such use falls under subparagraphs (a) to (c). This subparagraph shall also apply to cases where a graphical symbol referring to a geographical place of a Party is used on a product or service in a manner, as prescribed in applicable laws and regulations of the Party, that misleads the public.
- (e)
 - (i) Each Party shall ensure that the registration of a trademark which contains or consists of a geographical indication, with respect to products not originating in the territory indicated, is refused or invalidated *ex officio* if the legislation of the Party so permits or at the request of an interested party, if the use of the indication in the trademark of such products in the Party corresponds to a situation referred to in subparagraph (a)(i), (a)(iii), or (d) insofar as subparagraph (a)(i) or (a)(iii) is applicable.
 - (ii) Each Party shall ensure that the registration of a trademark which contains or consists of an indication of service, the country name of either Party, or the name of a canton of Switzerland, the use of which corresponds to a situation referred to in subparagraph (b), (c), or (d) insofar as subparagraph (b) or (c) is applicable, is refused or invalidated *ex officio* if the legislation of the Party so permits or at the request of an interested party, where the trademark misleads the public in a manner as prescribed in the applicable laws and regulations of the Party.
- (f) The protection afforded by this Article shall also apply in cases where products originating in a Party are destined for exportation.

- (g) (i) Each Party shall, in accordance with its obligations under Article 6ter of the Paris Convention, ensure that armorial bearings, flags and other State emblems of the other Party are not used or registered as trademarks or as elements of trademarks.
- (ii) Each Party reaffirms its obligations under paragraph 2 of Article 53 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 which provides that the use by private individuals, societies or firms, of the arms of Switzerland, or of marks constituting an imitation thereof, whether as trademarks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times.
- (iii) Each Party shall ensure that armorial bearings, flags and other State or regional emblems of the other Party shall not be used in a manner, as prescribed in applicable laws and regulations of the Party, that misleads the public.

4. In proceedings by the relevant authorities of each Party, whether administrative or judicial, regarding the protection provided for in this Article, designations listed by a Party in Annex X shall serve, without prejudice to action or procedures by the relevant authorities of the other Party, as a source of information that these designations are protected by the former Party as geographical indications as provided for in this Article.

- 5. (a) The Parties shall, upon request of either Party, review in the Joint Committee Annex X with a view to updating the list by including in Annex X geographical indications which received protection by either Party at its national level.
- (b) Modifications proposed pursuant to subparagraph (a) shall be incorporated into this Agreement in accordance with paragraph 2 of Article 152.

6. Without prejudice to the rights and obligations set out in the international agreements to which both Parties are parties, paragraphs 3 to 9 of Article 24 of the TRIPS Agreement apply to the provisions of this Article in relation to geographical indications and, *mutatis mutandis*, to related indications.

Article 120 Unfair Competition

1. Each Party shall provide for effective protection against acts of unfair competition.

2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following acts of unfair competition, in particular, shall be prohibited:

- (a) all acts of such a nature as to create confusion by any means whatever with the establishment, the products, the services, or the industrial or commercial activities, of a competitor;
- (b) false allegations in the course of trade of such a nature as to discredit the establishment, the products, the services, or the industrial or commercial activities, of a competitor;
- (c) indications or allegations, the use of which in the course of trade is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity, of the products or the services, or the manufacturing process of the products;
- (d) acts of creating confusion with another person's products or business by:
 - (i) using an indication of products or business which is identical or similar to that other person's indication of products or business which is well-known among consumers or other purchasers; or
 - (ii) assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electric telecommunication line, products using such indication;

- (e) acts of using as one's own an indication of products or business which is identical or similar to another person's famous indication of products or business, or acts of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through an electric telecommunication line, products using such indication;
- (f) acts of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing products which imitate the configuration, excluding configuration which is indispensable for ensuring the function of the products, of another person's products;
- (g) acts of acquiring or holding a right to use domain names identical or similar to a specific indication of products or services of another person, or acts of using the domain name, with intention to gain unfair profit or intention of causing damage to another person; and
- (h) acts by an agent or representative of an owner of a right relating to a trademark, without a legitimate reason and the consent of the right-owner, of using a trademark identical or similar to the trademark for products or services identical or similar to those relating to such right; of using such trademark in assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through an electric telecommunication line products which are identical or similar to the products relating to such right; or of using such trademark in providing services which are identical or similar to the services relating to such right.

3. For the purposes of this Article, "indication of products or business" means a name, trade name, trademark, mark, or container or package of products, used in relation to a person's business, or any other indication of a person's products or business.

4. Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with paragraph 2 of Article 39 of the TRIPS Agreement.

Article 121

Treatment of Test Data in Marketing Approval Procedure

1. Each Party shall prevent applicants for marketing approval for pharmaceutical products which utilise new chemical entities from relying on or from referring to test or other data submitted to its competent authority by the first applicant for a certain period of time counted from the date of approval of that application. As of the date of entry into force of this Agreement, such period of time is stipulated as being no less than six years by the relevant laws of each Party.

2. Each Party, when requiring, as a condition for approving the marketing of agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall ensure that, in accordance with its relevant laws and regulations, applicants for marketing approval are either:

- (a) prevented from relying on or from referring to such data submitted to its competent authority by the first applicant for a period of at least ten years counted from the date of approval of that application; or
- (b) required generally to submit a full set of test data, even in cases where there was a prior application for the same product, for a period, counted from the date of approval of a prior application, of at least ten years.

Article 122

Enforcement - General

Each Party shall endeavour to:

- (a) encourage the establishment of public and/or private advisory groups to address issues of counterfeiting and piracy; and
- (b) enhance internal coordination among, and facilitate joint actions by, its government agencies concerned with enforcement of intellectual property rights, subject to its available resources.

Article 123
Enforcement - Border Measures

1. Each Party shall provide for procedures concerning the suspension at the border by its customs authority, *ex officio*, of the release of products infringing rights at least to patents, utility models where provided for in its laws and regulations, industrial designs or trademarks, or copyrights or related rights which are destined for importation into, exportation from or transit through, the customs territory of the Party.

2. For the purposes of this Article:

- (a) "exportation" includes re-exportation; and
- (b) "transit" means transshipment and customs transit, as defined in the International Convention on the Simplification and Harmonization of Customs Procedures.

3. Each Party shall provide for procedures concerning the suspension at the border by its customs authority, upon request of a right holder, of the release of products infringing rights at least as referred to in paragraph 1, which are destined for importation into, exportation from and, where provided for in its laws and regulations, transit through, the customs territory of the Party.

4. In the case of the suspension pursuant to paragraphs 1 and 3 with respect to importation into, exportation from and, where provided for in the laws and regulations of a Party, transit through, the customs territory of the Party, the competent authorities of the Party suspending the release of the products shall notify the right holder of the name and addresses of the consignor or consignee, and the importer or exporter, as applicable, of the products in question. Such competent authorities shall notify the right holder of the names and addresses of the producer of the products in question, when they find that such information is indicated in the course of customs clearance procedures.

5. Each Party shall ensure that the products, the release of which has been suspended pursuant to paragraphs 1 and 3 and which have been found to be infringing products by the competent authorities, will not be released into free circulation without the consent of the right holder and will be destroyed in accordance with its laws and regulations.

6. Each Party shall ensure that right holders do not have to bear an unreasonable burden because of the fees and the cost of storage and destruction of the products the release of which has been suspended pursuant to paragraphs 1 and 3 and which have been found to be infringing products.

7. The competent authorities of each Party shall enable the right holder to analyse samples of the products the release of which has been suspended pursuant to paragraph 3, as appropriate and to the extent permitted by the laws and regulations of the Party, at the expense of the right holder.

8. Each Party shall adopt simplified procedures, which are to be used in the absence of objections and subject to the terms and conditions provided for in its laws and regulations, for the competent authorities to seize or destroy the products the release of which has been suspended.

Article 124 Enforcement - Civil Remedies

1. Each Party shall ensure that the right holder has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of his or her intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in the infringing activity.

2. For the purposes of this Article, "right holder" shall include holders of interests which are protected under the laws and regulations of each Party preventing acts of unfair competition.

3. Where the right holder claims against the infringer compensation for damages caused by an intentional or negligent infringement of his or her intellectual property rights, an amount calculated, taking into consideration such factors as the following, may be, where applicable, presumed to be the amount of such damages, whether or not actual damages can be calculated:

- (a) the quantity of the products infringing the right holder's intellectual property rights and actually transferred to third persons, and the amount of profit per unit of products which would have been sold by the right holder if there had not been the act of infringement;
- (b) the profits earned by the infringer from the act of infringement; or

- (c) the amount that the right holder would have been entitled to receive for the exercise of his or her intellectual property rights.

4. In cases where it is extremely difficult for the right holder of intellectual property rights to prove the actual economic harm due to the nature of facts concerned, each Party shall ensure that, to the extent possible in accordance with its laws and regulations, its judicial authorities have the authority to determine the amount of damages based on the totality of the evidence presented to them.

Article 125 Enforcement - Criminal Remedies

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of the following acts committed wilfully and on a commercial scale:

- (a) infringement of rights to patents, utility models where provided for in its laws and regulations, industrial designs or trademarks, copyrights or related rights, or rights relating to new varieties of plants;
- (b) infringement of rights to layout-design of integrated circuits;
- (c) disclosure of undisclosed information provided for in paragraph 4 of Article 120 to the extent provided for in the laws and regulations of the Party; and
- (d) the acts of unfair competition provided for in subparagraphs 2(c) to 2(f) of Article 120 and the use of geographical indications and related indications as prescribed in subparagraphs 3(a) (i), 3(a) (ii), 3(b), 3(c), 3(d) insofar as subparagraph 3(a) (iii) is not applicable, 3(g) (i) and 3(g) (iii) of Article 119, to the extent provided for in the laws and regulations of the Party.

2. Importation, exportation or transit of products which constitutes an act referred to in subparagraph 1(a) or 1(d) shall be covered by the criminal procedures and penalties referred to in paragraph 1. Paragraph 2 of Article 123 shall apply to this paragraph.

3. Each Party shall provide for, where permitted by its laws and regulations, stricter or separate penalties to offences listed in subparagraphs 1(a), 1(b) and 1(d) committed in connection with corporate activities or on a commercial scale.

4. Each Party shall ensure that, in cases of infringement committed wilfully and on a commercial scale of rights to patents, utility models where provided in its laws and regulations, industrial designs, trademarks or new varieties of plants, or the acts of unfair competition provided for in subparagraphs 2(c) to 2(f) of Article 120 to the extent provided for in its laws and regulations committed wilfully and on a commercial scale, its competent authorities may institute prosecution *ex officio*, without the need for a formal complaint by the right holder whose right has been infringed.

5. Each Party shall ensure that, in cases where either (a) infringement of rights to patents or trademarks, or copyrights or related rights, or (b) offence of the customs laws in connection with the infringement of intellectual property rights, is committed by an organised criminal group, its judicial authorities have the authority to confiscate crime proceeds and properties derived from such crime proceeds in accordance with its laws and regulations.

6. Each Party shall provide for criminal penalties to be applied in cases of wilful import conducted on a commercial scale of labels on which a trademark has been applied that is identical to a trademark registered in the Party in respect of certain products, or that is similar to or cannot be distinguished in its essential aspects from such trademark, if such labels are intended to be used on the products for which such trademark is registered or on similar products.

Article 126 Internet Service Providers

1. For the purposes of encouraging Internet service providers to cooperate with right holders in protecting their rights against materials infringing intellectual property rights, each Party shall provide measures to prevent undue liabilities of Internet service providers for the removal of materials that they have put on their Internet websites under contracts with information senders where a right holder claims to the Internet service provider that such materials infringe his or her intellectual property rights, provided that the Internet service provider complies with the procedures to be followed by the parties concerned.

2. Each Party shall enable right holders, who have given effective notification to an Internet service provider of materials that they claim with valid reasons to be infringing their intellectual property rights, to expeditiously obtain from that Internet service provider information on the identity of the information sender.

Article 127 Cooperation

1. The Parties, recognising the growing importance of protection of intellectual property in further promoting trade and investment between them, in accordance with their respective laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property, including by exchanging information on relations of the Parties with non-Parties on matters concerning intellectual property.

2. The Parties shall seek for cooperation on activities relating to future international conventions on harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations including the World Trade Organization and the WIPO.

3. Chapter 14 shall not apply to this Article.

Article 128 Sub-Committee on Intellectual Property

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee") is hereby established.

2. The functions of the Sub-Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property protection system;
- (c) reporting its findings and the outcome of its discussions to the Joint Committee; and

- (d) carrying out other tasks as may be assigned by the Joint Committee.
- 3. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.
- 4. The Sub-Committee shall be:
 - (a) composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties, including those from private sectors, with the necessary expertise relevant to the issues to be discussed; and
 - (b) co-chaired by officials of the Governments of the Parties.

Article 129
Security Exceptions

For the purposes of this Chapter, Article 73 of the TRIPS Agreement is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.