

PART FIVE – INTELLECTUAL PROPERTY

CHAPTER 15

Section A – Definitions and General Provisions

Article 15-01

Definitions

For the purposes of this Chapter:

Berne Convention means the Berne Convention for the Protection of Literary and Artistic Works, Paris Act of 24 July 1971;

Geneva Convention means the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, adopted in Geneva on 29 October 1971;

Paris Convention means the Paris Convention for the Protection of Industrial Property, Stockholm Act of 14 July 1967; and

Rome Convention means the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations adopted in Rome on 26 October 1961.

Article 15-02

Protection of Intellectual Property Rights

1. The intellectual property rights regulated in this Chapter are the copyrights, related rights, trademarks and designations of origins referred to in this Chapter.
2. Each Party shall grant in its territory to nationals of the other Party adequate and effective protection of the intellectual property rights referred to in this Chapter and ensure that measures to enforce those rights do not themselves become barriers to legitimate trade.
3. Each Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.

Article 15-03

Relation to Other Intellectual Property Agreements

1. No provision of this Chapter, relating to intellectual property rights, shall derogate from existing obligations that the Parties may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Geneva Convention.

2. For the purpose of granting adequate and effective protection and enforcement of the intellectual property rights referred to in this Chapter, the Parties shall give effect to, at a minimum, the substantive provisions of the Paris Convention, the Berne Convention, the Rome Convention and the Geneva Convention.

Article 15-04

National Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection and enforcement of the intellectual property rights referred to in this Chapter, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Geneva Convention.

2. Each Party may avail itself of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Party, only where such exemptions:

(a) are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions this Chapter; and

(b) are not applied in a manner that would constitute a disguised restriction on trade.

3. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.

Article 15-05

Most Favoured-Nation Treatment

With regard to the protection of the intellectual property rights referred to in this Chapter, any advantage, favour, privilege or immunity granted by a Party to the nationals of any non-Party country shall be accorded immediately and unconditionally to the nationals of the other Party. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Party:

- (a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;
- (b) granted in accordance with the provisions of the Berne Convention or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country; or
- (c) in respect of the rights of performers, producers of sound recordings and broadcasting organizations not provided under this Chapter.

Article 15-06

Control of Abusive or Anticompetitive Practices or Conditions

1. The Parties agree that some licensing practices or conditions pertaining to the intellectual property rights referred to in this Chapter which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Chapter shall prevent the Parties from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As established in paragraph 1, a Party may adopt, consistently with the other provisions of this Chapter, appropriate measures to prevent or control such practices, which may include exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Party.

Article 15-07

Cooperation to Eliminate Trade in Infringing Goods

Each Party shall establish a competent office or authority to exchange information on trade in goods or services infringing the intellectual property rights referred to in this Chapter, with a view to eliminating illegal trade in such goods or services.

Article 15-08

Scope of the Cooperation

The cooperation mentioned in Article 15-07, shall exclude, if required by a Party, matters that have been submitted to the competent courts of each Party.

Section B – Copyright and Related Rights

Article 15-09

Copyright

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention.
2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1.
3. Computer programmes, whether in source or object code, shall be protected as literary works under the Berne Convention.
4. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such. Such protection shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.
5. In respect of at least computer programmes and cinematographic works, the Parties shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Party shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Party on authors and their successors in title. In respect of computer programmes, this obligation does not apply to rentals where the programme itself is not the essential object of the rental.

Article 15-10

Performers

1. Each Party shall grant performers the rights referred to the Rome Convention.
2. Notwithstanding the above, where a performer has consented to the visual or audiovisual fixation of a performance, Article 7 of the Rome Convention shall cease to be applicable.

Article 15-11

Producers of Sound Recordings

1. Each Party shall grant producers of sound recordings the rights referred to in the Rome Convention and the Geneva Convention, including the right to authorize or prohibit the first distribution to the public of the original and each copy of the sound recording through sale, rental or any other means.
2. Each Party shall grant producers of sound recordings, in accordance with its law, the right to authorize or prohibit commercial rental to the public of the originals or copies of protected sound recordings.

Article 15-12

Protection of Programme-Carrying Satellite Signals

Within five years from the date of entry into force of this Agreement, the Parties shall make it a civil offence to manufacture, import, sell, lease or perform a commercial act to make available devices that are primarily of assistance in decoding an encrypted programme-carrying satellite signal or to use such devices for commercial purposes without the authorization of the lawful provider or distributor of the service, in accordance with each Party's law.

Article 15-13

Provision for Copyright and Related Rights

1. Each Party shall provide that for copyright and related rights, any person acquiring or holding economic rights:
 - (a) may freely and separately transfer such rights on any terms; and
 - (b) may exercise those rights in its own name and fully enjoy the benefits derived from those rights.
2. Each Party shall confine limitations or exceptions to copyright and related rights to certain special cases that do not conflict with normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 15-14

Term of Protection of Copyright and Related Rights

1. The term of protection of an author's work shall last for life and for a minimum of 50 years after the author's death.
2. Where the term of protection of a work is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years counted from the end of the calendar year of the authorized publication of the work or, failing

such authorized publication, 50 years from the making of the work counted the end of the calendar year of making.

3. The term of protection for the rights of performers and producers of sound recordings shall not be less than 50 years counted from the end of the calendar year of interpretation or fixation.

4. The term of protection for broadcasting organizations shall be a minimum of 25 years counted from the end of the calendar year in which the first broadcast was made.

Section C - Trademarks

Article 15-15

Protection

1. A trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one enterprise from those of another. Such signs may be registered as trademarks, particularly words, including personal names, letters, numerals, figurative elements, combinations of colours and any combination of signs. Where the signs are not intrinsically capable of distinguishing the relevant goods or services, each Party may make their registration contingent on the distinctive character they have acquired through use. A Party may require, as a condition for registration, that a sign be visually perceptible.

2. The Parties may refuse to register trademarks that are contrary to morality or decorum, reproduce national symbols or mislead the public.

3. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

4. Each Party shall publish a trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, each Party may afford an opportunity for the registration of a trademark to be opposed.

Article 15-16

Rights Conferred

The owner of a registered trademark shall have 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 goods 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. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above 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 15-17

Well-Known Trademarks

1. Each Party shall apply Article 6 bis of the Paris Convention to service marks.
2. A trademark shall be considered well known in a Party when a given sector of the public or of commercial circles in the Party knows the trademark as a consequence of commercial activities undertaken within or outside that Party by a person using the trademark in relation to its goods or services, and when the mark is known in the territory of the Party as a consequence of promotion or publicity of the mark.
3. Each Party shall, under its law, provide the means to deny or invalidate registration as a trademark of signs or figures that are identical or similar to a well-known trademark to be applied to a good or service in any case in which use of the mark by the person applying for registration could cause confusion or the risk of association with the person mentioned in paragraph 2, or which takes unfair advantage of the prestige of the mark. This prohibition shall not apply when the applicant for registration is the person referred to in paragraph 2.
4. To demonstrate that a trademark is well known, all evidence admitted by the Party in which the intention is to show that it is well known may be used.

Article 15-18

Exceptions

The Parties may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 15-19

Term of Protection

Initial registration, and each renewal of registration of a trademark shall be for a term of no less than ten years counted from the date on which the application was filed or the date on which it was granted. The registration of a trademark shall be renewable indefinitely.

Article 15-20

Requirement of Use

1. If use is required by a Party to maintain the registration of a trademark, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the

will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 15-21

Renewal of a Trademark

Subject to Annex 15-21, if use is required by a Party to renew a trademark, registration shall not be renewed without evidence of use of the trademark in accordance with the law of each Party.

Article 15-22

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one enterprise from those of other enterprises.

Article 15-23

Licensing and Assignment

Each Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the enterprise to which the trademark belongs.

Section D – Designations of Origin

Article 15-24

Designations of Origin

1. Designations of origin shall be governed by the provisions of Annex 15-24.
2. The provisions of Article 23 of the TRIPS Agreement shall apply to the designations of origin set out in Annex 15-24.

Section E – Enforcement of Intellectual Property Rights

Article 15-25

Definitions

For the purposes of this Section:

counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

pirated copyright goods means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an Article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation; and

right holder includes federations and associations having legal standing to assert such rights.

Article 15-26

General Obligations

1. The Parties shall ensure that enforcement procedures as provided in this Section, regarding the intellectual property rights referred to in this Chapter, are available under their law so as to permit effective action to be taken against any act of infringement of such rights, including expeditious remedies to prevent infringements and remedies which constitute an effective deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
3. Decisions on the merits of a case shall preferably be in writing and state the reasons. They shall be made available at least to the parties to the proceeding without undue delay. Decisions shall be based only on evidence in respect of which parties were offered the opportunity to be heard.
4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Party's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.
5. It is understood that this Section does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct

from that for the enforcement of law in general, nor does it affect the capacity of the Parties to enforce their law in general. Nothing in this Section creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

Civil and Administrative Procedure and Remedies

Article 15-27

Fair and Equitable Procedures

The Parties shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered by this Chapter. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 15-28

Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the Parties may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 15-29

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. The Parties are not obliged to accord such authority in respect of protected subject matter acquired

or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Section and provided that the provisions of Sections B and C specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, the Parties may limit the remedies available against such use to payment of adequate compensation to the right holder, based on the circumstances of each case and taking account of the economic value of the authorization. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with domestic law, declaratory judgements and adequate compensation shall be available.

Article 15-30

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder's damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, the Parties may authorize the judicial authorities to order recovery of profits or payment of pre-established damages, or both, even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 15-31

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 15-32

Right of Information

The Parties may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 15-33

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.
2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, the Parties shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 15-34

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in Articles 15-27 to 15-33.

Article 15-35

Provisional Measures

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:
 - (a) to prevent an infringement of any intellectual property right covered in this Chapter from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods, immediately after customs clearance; and
 - (b) to preserve relevant evidence in regard to the alleged infringement.
2. The judicial authorities shall have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to

cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Party's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Article.

Special Requirements Related to Border Measures

Article 15-36

Suspension of Release by Customs Authorities

1. The Parties shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place in contravention of the holder's rights, to lodge an application in writing with competent authorities, administrative or judicial, for the

suspension by the customs authorities of the release into free circulation of such goods. There shall be no obligation to apply such procedures to imports of goods put on the market in the other Party or in a non-Party country by or with the consent of the right holder, or to goods in transit.

2. The Parties may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of Articles 15-36 through 15-45 are met. The Parties may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 15-37

Application

Any right holder initiating the procedures under Article 15-36 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 15-38

Security or Equivalent Assurance

The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 15-39

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods pursuant to Article 15-36.

Article 15-40

Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or

exportation have been complied with. In appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 15-35(6) shall apply.

Article 15-41

Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 15-40.

Article 15-42

Right of Inspection and Information

Without prejudice to the protection of confidential information, the Parties shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, the Parties may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 15-43

Ex Officio Action

Where the Parties require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

- (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
- (b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions set out in Article 15-40; and

- (c) the Parties shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 15-44

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, the competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 15-31. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 15-45

De Minimis Imports

The Parties may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

Article 15-46

Criminal Procedures

The Parties shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. The Parties may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

Section F – Final Provisions

Article 15-47

Application of this Chapter

1. This Chapter does not give rise to obligations in respect of acts which occurred before the date of entry into force of this Agreement.
2. Except as otherwise provided for in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement, and which is protected in a Party on the said date. In respect of this paragraph and paragraph 3, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention.
3. There shall be no obligation to restore protection to subject matter which on the date this Agreement enters into force has fallen into the public domain.