

CHAPTER 7
INTELLECTUAL PROPERTY⁵⁹

SECTION 7.1
GENERAL PROVISIONS

ARTICLE 7.1

Objectives

The objectives of this Chapter 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 effective and non-discriminatory level of protection and enforcement of intellectual property rights.

ARTICLE 7.2

Scope

- 1. This Chapter shall complement the rights and obligations of each Party under the Agreement on Trade-Related Aspects of Intellectual Property Rights, done at Marrakesh on 15 April 1994 (TRIPS Agreement) and other international treaties in the field of intellectual property to which they are parties.
- 2. This Chapter does not preclude a Party from introducing more extensive protection and enforcement of intellectual property rights than required under this Chapter, provided that such protection and enforcement does not contravene this Chapter.

⁵⁹ Pursuant to Article 1.4 (Trade and Economic Relations Governed by this Agreement) of Chapter 1 (General Provisions), any matter pertaining to: i) geographical indications, including Sub-Section 7.2.4 (Geographical Indications and Traditional Terms); ii) patents, including Sub-Section 7.2.5 (Patents); and iii) enforcement, including Section 7.3 (Enforcement of Intellectual Property Rights) shall not apply to Liechtenstein.

ARTICLE 7.3

Definitions

For the purposes of this Chapter, 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 Organization;
- (e) “intellectual property rights” means copyrights, including the protection of computer programmes and compilations of data, as well as related rights, trademarks for goods and services, geographical indications for goods, and indications of source for goods and services, industrial designs, patents, plant varieties, topographies of integrated circuits, as well as undisclosed information; and
- (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 7.4

International Agreements

1. Subject to paragraph 2, 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 Paris Convention;

- (e) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;
 - (f) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996;
 - (g) 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;
 - (h) 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;
 - (i) 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;
 - (j) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999;
 - (k) the International Convention for the Protection of New Varieties of Plants, done at Paris on 2 December 1978 or 1991;⁶⁰ and
 - (l) the European Patent Convention of 5 October 1973 as revised by the Act revising Article 63 EPC on 17 December 1991 and the Act revising the EPC of 29 November 2000.
2. If a Party to this Agreement is not a party to one or more of the multilateral agreements listed in paragraph 1, then that Party affirms the substantive standards of any listed agreement or agreements to which it is not a party.
 3. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements, provided they are not already a party to them:
 - (a) the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012; and
 - (b) the Singapore Treaty on the Law of Trademarks adopted at Singapore on 27 March 2006.

⁶⁰ Liechtenstein is not yet a party to the Convention for the Protection of New Varieties of Plants. The obligation with regard to subparagraph (k) of paragraph 1 and paragraph 2 of this Article shall become applicable to Liechtenstein once it has become a party to the Convention.

ARTICLE 7.5

Exhaustion

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

ARTICLE 7.6

National Treatment

1. In respect of all categories of intellectual property covered by this Chapter, each Party shall accord to the nationals of each 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, “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 Chapter, including measures to prevent the circumvention of effective technological measures as referred to in Article 7.16 (Protection of Technological Measures) and measures concerning rights management information as referred to in Article 7.17 (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 another 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 Chapter; 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.

SECTION 7.2

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 7.2.1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 7.7

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; and
- (d) except in relation to buildings or works of applied art, the commercial rental to the public of originals or copies of their works.

ARTICLE 7.8

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; and
- (f) the commercial rental to the public of the fixation of their performances.

ARTICLE 7.9

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; and
- (d) the commercial rental of their phonograms to the public.

ARTICLE 7.10

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; and
- (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 7.11

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 7.12

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 7.13

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 7.14

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 the respective Parties 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 the Parties and representing another collective management organisation established in another 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 7.15

Exceptions and Limitations

Each Party shall confine limitations or exceptions to the rights set out in Articles 7.7 (Authors) to 7.11 (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 7.16

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 programmes.
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 Sub-Section, “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 Sub-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, 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 7.15 (Exceptions and Limitations) from enjoying such exceptions or limitations.

ARTICLE 7.17

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; and
 - (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected pursuant to this Sub-Section from which electronic rights-management information has been removed or altered without authority.
2. 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.
3. 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.
4. 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.

SUB-SECTION 7.2.2

TRADE MARKS

ARTICLE 7.18

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 7.19

Signs of Which a Registered 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, or any combination of such signs, 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 registers 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 7.20

Rights Conferred by a Registered 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 that do not have the proprietor's consent from using in the course of trade in relation to goods or services:
 - (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; or

- (c) any sign which is identical with, or similar to, the trade mark (irrespective of whether it is used in relation to goods or services which are identical with, similar to, or not similar to, those for which the trade mark is registered) where the trade mark has a reputation in the relevant Party and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.
- 2. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.
 - 3. If the reproduction of a trade mark in a dictionary, encyclopedia or similar reference work, in print or electronic form, gives the impression that it constitutes the generic name of the goods or services for which the trade mark is registered, the publisher of the work shall, at the request in writing of the proprietor of the trade mark, ensure that the reproduction of the trade mark is, without delay, and in the case of works in printed form at the latest in the next edition of the publication, accompanied by an indication that it is a registered trade mark.

ARTICLE 7.21

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 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.
- 3. Each Party shall provide for the possibility for third parties to apply for the invalidation or revocation of trade mark registrations. Such invalidation or revocation proceedings shall be adversarial.
- 4. Each Party shall provide a publicly available electronic database of trade mark applications and trade mark registrations.
- 5. Each Party's trade mark application, processing, registration and maintenance systems may be provided electronically.

ARTICLE 7.22

Well-Known Trade Marks

1. For the purpose of giving effect to the 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 reaffirms the importance of, and shall be guided by 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 WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.
2. No Party may require, as a condition for determining that a trade mark is well known, that the trade mark has been registered in that Party or in another jurisdiction, included on a list of well-known trade marks or given prior recognition as a well-known trade mark.

ARTICLE 7.23

Exceptions to the Rights Conferred by a Trade Mark

1. Each Party may 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 law of the Party in question and is used within the limits of the territory in which it is recognised.

ARTICLE 7.24

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 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 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.
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; or
 - (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 7.25

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 7.26

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.

SUB-SECTION 7.2.3

DESIGN

ARTICLE 7.27

Protection of Registered Designs

1. Each Party shall provide for the protection of designs that are new and have individual character. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Sub-Section.
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, using, offering for sale, selling, importing, exporting, or stocking a product in which the design is incorporated or to which it is applied, 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 have individual character:
 - (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and
 - (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.
4. For the purposes of subparagraph 3(a), "normal use" means use by the end user, excluding maintenance, servicing or repair work.

ARTICLE 7.28

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 filed.⁶¹ A Party may provide for a shorter period of protection for designs of component parts used for the purpose of the repair of a product.

⁶¹ Each Party may determine the relevant date of filing of the application in accordance with its own law.

ARTICLE 7.29

Exceptions and Exclusions

1. Each Party may provide limited exceptions to the protection of 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, in each case 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 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 paragraph 1 of Article 7.27 (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 7.30

Relationship to Copyright

Each Party shall ensure that 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.

SUB-SECTION 7.2.4

GEOGRAPHICAL INDICATIONS AND TRADITIONAL TERMS

ARTICLE 7.31

Effect of this Sub-Section

The provisions of this Sub-Section shall supersede Articles 46 and 47 of the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union, done at London on 28 January 2020 (Separation Agreement) in its entirety.

ARTICLE 7.32

Scope

1. This Sub-Section applies to the recognition and protection of geographical indications for agricultural products and foodstuffs which originate in the territories of the United Kingdom and Iceland, and for wines, aromatised wines and spirits drinks which originate in the territories of the Parties,⁶² and traditional terms which originate in the United Kingdom.⁶³
2. This Sub-Section does not apply to the recognition and protection by Norway of geographical indications for agricultural products and foodstuffs which originate in the territory of the United Kingdom.

⁶² This Sub-Section shall not apply to geographical indications protected by the Parties under other international agreements to which the Parties are subject.

⁶³ Without prejudice to this paragraph, the geographical indications and traditional terms of the United Kingdom listed in Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) may include the geographical indications and traditional terms of the Bailiwicks of Guernsey and Jersey and the Isle of Man.

ARTICLE 7.33

Systems for the Registration and Protection of Geographical Indications

1. The Parties shall continue to operate systems for the registration and protection of geographical indications in their territories that include at least the following elements:⁶⁴
 - (a) a register listing geographical indications protected in their respective territories;
 - (b) an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
 - (c) a requirement that a geographical indication shall correspond to a specific product or products for which a product specification is laid down which may only be amended by due administrative process;
 - (d) control provisions applying to production;
 - (e) legal provisions laying down that a geographical indication may be used by any operator marketing the product conforming to the corresponding specification; and
 - (f) an objection procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

ARTICLE 7.34

Recognition of Specific Geographical Indications

1. In Iceland, the geographical indications of the United Kingdom listed in Parts A, B and D of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom), shall be protected for those products which use these geographical indications according to the level of protection laid down in this Sub-Section.
2. In Norway, the geographical indications of the United Kingdom listed in Parts B and D of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom), shall be protected for those products which use these geographical indications according to the level of protection laid down in this Sub-Section.

⁶⁴ The United Kingdom recognises that the systems for the registration and protection of geographical indications as applicable in the territories of each of Iceland and Norway at the date of entry into force of this Agreement meet the elements laid down in this Article.

3. In the United Kingdom, the geographical indications of Norway listed in Annex XXIII (Geographical Indications of Norway), shall be protected for those products which use these geographical indications according to the level of protection laid down in this Sub-Section.
4. In the United Kingdom, the geographical indications of Iceland listed in Part A of Annex XXII (Geographical Indications of Iceland), shall be protected for those products which use these geographical indications according to the level of protection laid down in this Sub-Section.

ARTICLE 7.35

Protection of Traditional Terms

In Iceland and Norway the traditional terms of the United Kingdom listed in Part C of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) shall be protected against:

- (a) any misuse, including where it is accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar;
- (b) any other false or misleading indication in the marketing of a product as to its nature, characteristics or essential qualities; and
- (c) any other practice likely to mislead the consumer.

ARTICLE 7.36

Right of Use

A geographical indication protected under this Sub-Section may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits conforming to the corresponding specification.

ARTICLE 7.37

Scope of Protection

1. Geographical indications referred to in Article 7.34 (Recognition of Specific Geographical Indications), including those added pursuant to Article 7.40 (Amending the Annexes on Geographical Indications) and Article 7.41 (Processing of Specific Geographical Indications), shall be protected against:
 - (a) the direct or indirect commercial use of any means in the designation or presentation of a product that indicates or suggests that the product

in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the product;

- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or the geographical indication is used⁶⁵ in translation or transcription or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavour', 'like' or similar;
 - (c) any other false or misleading indication in the marketing of a product as to its origin, nature or essential qualities, which is liable to convey a false impression as to its origin; and
 - (d) any other use which constitutes an act of unfair competition within the meaning of Article 10 *bis* of the Paris Convention.
2. This Sub-Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead consumers.
 3. If geographical indications of the Parties are wholly or partially homonymous, protection shall be granted to each indication provided that it has been used in good faith. Each Party shall decide the practical conditions of use under which the wholly or partially homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
 4. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication which is not or ceases to be protected in its country of origin or which has fallen into disuse in that country. Each Party shall notify the other Parties if a geographical indication ceases to be protected in the territory of the Party of origin. Such notification shall take place in accordance with paragraph 4 of Article 7.40 (Amending the Annexes on Geographical Indications).
 5. The protection of a geographical indication under this Article is without prejudice to the continued use of a trade mark which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of a Party before the date of the application for protection of the geographical indication. Such trade mark may continue to be used and renewed for that product notwithstanding the protection of the geographical indication, provided that no grounds for the trade mark's invalidity or revocation exist in the legislation of the Party

⁶⁵ For greater certainty, it is understood that this is assessed on a case-by-case basis. This provision does not apply where evidence is provided that there is no link between the protected name and the translated or transliterated term.

concerned. The date of application for protection of the geographical indication is determined in accordance with paragraph 2 of Article 7.39 (Relationship with Trade Marks).

6. A name may not be registered as a geographical indication where it conflicts with the name of a plant variety, including a grape variety, or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.
7. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if that name is the term customary in common language as the common name for the good concerned in the territory of that Party.
8. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if, in light of a trade mark's reputation and renown and the length of time it has been used, that name is liable to mislead the consumer as to the true identity of the product.

ARTICLE 7.38

Enforcement of Protection

Each Party shall authorise its competent authorities to take appropriate measures *ex officio* or on request of an interested party in accordance with its law to protect geographical indications of another Party protected under this Sub-Section.

ARTICLE 7.39

Relationship with Trade Marks

1. The registration of a trade mark that corresponds to any of the situations referred to in paragraph 1 of Article 7.37 (Scope of Protection) in relation to a geographical indication protected under Article 7.34 (Recognition of Specific Geographical Indications) for like products, including those added pursuant to Article 7.40 (Amending the Annexes on Geographical Indications) and Article 7.41 (Processing of Specific Geographical Indications), shall be refused or invalidated by the Parties, provided an application for registration of the trade mark is submitted after the date of application for protection of the geographical indication in the territory concerned.
2. For the purposes of paragraph 1:
 - (a) for geographical indications referred to in paragraph 1 of Article 7.34 (Recognition of Specific Geographical Indications) and listed in Part A of Annex XXIV (Geographical Indications and Traditional Terms

of the United Kingdom) as at the date of entry into force of this Agreement, the date of application for protection shall be 1 May 2018;

- (b) for geographical indications referred to in Article 7.34 (Recognition of Specific Geographical Indications) and listed in Parts B and D of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) and Annex XXIII (Geographical Indications of Norway) as at the date of entry into force of this Agreement, the date of application for protection shall be the date on which the application that resulted in the first registration of the geographical indication in the Union was submitted to the European Commission;
- (c) for geographical indications referred to in Article 7.40 (Amending the Annexes on Geographical Indications), and added to an annex referred to in paragraph 1 of Article 7.40 (Amending the Annexes on Geographical Indications) after the date of entry into force of this Agreement, the date of application for protection shall be the date of a Party's receipt of a request by the other Party to protect a geographical indication; and
- (d) for geographical indications referred to in Article 7.41 (Processing of Specific Geographical Indications), and added to Part A of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) or Part A of Annex XXII (Geographical Indications of Iceland) after the date of entry into force of this Agreement, the date of application for protection shall be the date on which this Agreement is signed.

ARTICLE 7.40

Amending the Annexes on Geographical Indications

1. The Parties agree on the possibility of adding geographical indications to Parts A, B and D of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom,) Annex XXIII (Geographical Indications of Norway) and Part A of Annex XXII (Geographical Indications of Iceland) in accordance with the procedure set out in this Article after having completed an objection procedure and after having examined the geographical indications to the satisfaction of the relevant Parties.
2. For a geographical indication to be added to an annex referred to in paragraph 1 each of the following shall occur:
 - (a) the Party from which the relevant geographical indication originates (the Requesting Party) shall make a request to another Party (the

Receiving Party) to commence an examination and objection procedure with a view to adding to the relevant annex;

- (b) the Requesting Party shall copy its request to the Sub-Committee on Trade in Goods established under Article 2.19 (Sub-Committee on Trade in Goods) of Section 2.1 (General Provisions on Trade in Goods);
 - (c) upon the receipt of a request, the Receiving Party shall without undue delay undertake any necessary examination and objection procedures; and
 - (d) upon completing those procedures the Receiving Party shall, as soon as reasonably practicable, notify the Requesting Party and the Sub-Committee on Trade in Goods of the outcome in relation to the geographical indication it has considered.
3. At the first meeting of the Sub-Committee on Trade in Goods after receiving a notification referred to in subparagraph 2(d) confirming the eligibility for protection of a geographical indication in the territory of the Receiving Party, the Sub-Committee on Trade in Goods shall consider the request of the Requesting Party with a view to making a recommendation to the Joint Committee pursuant to paragraph 5 of Article 2.19 (Sub-Committee on Trade in Goods) of Section 2.1 (General Provisions on Trade in Goods) that the geographical indication should be added to the relevant annex.
4. If a geographical indication ceases to be protected in its country of origin or has fallen into disuse in that country, pursuant to paragraph 4 of Article 7.37 (Scope of Protection), the Party from which the geographical indication originates shall notify the other Parties and the Sub-Committee on Trade in Goods. At the first meeting of the Sub-Committee on Trade in Goods following the receipt of the notification referred to in this paragraph, the Sub-Committee on Trade in Goods shall make a recommendation to the Joint Committee that the geographical indication should be removed from the relevant annex.

ARTICLE 7.41

Processing of Specific Geographical Indications

1. Notwithstanding Article 7.40 (Amending the Annexes on Geographical Indications), Iceland shall conduct an examination and objection procedure for the geographical indications of the United Kingdom listed in Part E of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) as soon as possible after receipt of the corresponding specifications.

2. Notwithstanding Article 7.40 (Amending the Annexes on Geographical Indications), the United Kingdom shall conduct an examination and objection procedure for the geographical indication of Iceland listed in Part B of Annex XXII (Geographical Indications of Iceland) as soon as possible after receipt of the corresponding specification.
3. Upon completion of the procedures referred to in paragraphs 1 and 2, Iceland and the United Kingdom shall, as soon as reasonably practicable, notify the Sub-Committee on Trade in Goods of the outcome in relation to the geographical indications it has considered.
4. The Sub-Committee on Trade in Goods shall make a recommendation to the Joint Committee pursuant to paragraph 5 of Article 2.19 (Sub-Committee on Trade in Goods) of Section 2.1 (General Provisions on Trade in Goods) to add the geographical indications that are confirmed as eligible for protection to Part A of Annex XXIV (Geographical Indications and Traditional Terms of the United Kingdom) or Part A of Annex XXII (Geographical Indications of Iceland).

ARTICLE 7.42

Individual Applications for Protection of Geographical Indications and Traditional Terms

The provisions of this Sub-Section are without prejudice to the right to seek recognition and protection of a geographical indication under the relevant legislation of a Party.

ARTICLE 7.43

Indications of Source and Country Names

1. Each Party shall provide the legal means to prevent a trade mark being registered which includes an indication of source or a country name in relation to a good or service in a manner that misleads consumers as to the origin of that good or service. This provision shall apply even if the geographical name is translated or used in a modified form if such use misleads the public as to the true place of origin of that good or service.

Each Party shall, in accordance with their obligations under Article 6ter of the Paris Convention, provide that armorial bearings, flags and other State emblems of another Party are prevented from being used or registered as trade marks or designs without authorisation by the relevant competent authorities of that other Party where the law of such Party requires such authorisation. This paragraph shall also apply to signs that may be confused with armorial bearings, flags and other State emblems of a Party.

SUB-SECTION 7.2.5

PATENTS

ARTICLE 7.44

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 (Doha Declaration). In interpreting and implementing the rights and obligations under this Sub-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 7.45

Extension of the Period of Protection Conferred by a Patent on Medicinal Products and on Plant Protection Products⁶⁶

1. The Parties recognise that medicinal products and plant protection products⁶⁷ protected by a patent in the respective Party 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 law 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 each Party's law.
3. For the purposes of this Chapter, "medicinal product" means:

⁶⁶ Liechtenstein does not issue marketing authorisations to place plant protection products or pharmaceutical products on its market. Instead, marketing authorisations in Liechtenstein are granted by the relevant Swiss or Austrian authorities, in accordance with the applicable Swiss and European Economic Area (EEA) legislation.

⁶⁷ For the purposes of this Chapter, the term "plant protection product" shall be defined for each Party by the respective law of the Party.

- (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.

SUB-SECTION 7.2.6

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 7.46

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 Sub-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; and
 - (b) “trade secret holder” means any natural or legal person lawfully controlling a trade secret.
3. For the purposes of this Sub-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 subparagraph (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 subparagraph (b).
4. Nothing in this Sub-Section shall be understood as requiring a Party to consider any of the following conduct as contrary to honest commercial practices:
- (a) independent discovery or creation;
 - (b) observation, study, disassembly or testing 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; or
 - (d) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the law of that Party.
5. Nothing in this Sub-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 law of that Party.

ARTICLE 7.47

Protection of Data Submitted to Obtain an Authorisation to Put a Medicinal Product on the Market⁶⁸

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 all the Parties are 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 all 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 7.48

Protection of Data Submitted to Obtain Marketing Authorisation for Plant Protection Products or Biocidal Products⁶⁹

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

⁶⁸ Pursuant to the “Notenaustausch vom 11. Dezember 2001 zwischen der Schweiz und Liechtenstein betreffend die Geltung der schweizerischen Heilmittelgesetzgebung in Liechtenstein”, Liechtenstein applies the Swiss Legislation on Therapeutic Products (Medicinal Products and Medical Devices). In case of any inconsistencies between this Article and the Swiss Legislation on Therapeutic Products, the latter shall prevail.

⁶⁹ Pursuant to the Customs Union Treaty, Liechtenstein applies the Swiss Legislation on Plant Protection Products. In case of any inconsistencies between this Article and the Swiss Legislation on Plant Protection Products, the latter shall prevail.

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 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 7.3
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 7.3.1
GENERAL PROVISIONS

ARTICLE 7.49

General Obligations

1. Each Party shall provide for in its respective law the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.
2. For the purposes of Sub-Sections 7.3.1 (General Provisions), 7.3.2 (Civil and Administrative Enforcement) and 7.3.4 (Civil Judicial Procedures and Remedies of Trade Secrets), the term “intellectual property rights” does not include rights covered by Sub-Section 7.2.6 (Protection of Undisclosed Information).
3. 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; and
 - (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 7.50

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 Sub-Sections 7.3.2 and 7.3.4 of this Section:

- (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 associations⁷⁰, in so far as permitted by and in accordance with the law of a Party.

⁷⁰ 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.

SUB-SECTION 7.3.2

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 7.51

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.
3. The judicial authorities of a Party shall have the authority to adopt provisional measures without the other party to the proceedings having been heard, in particular where delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

ARTICLE 7.52

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.
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 7.53

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 subparagraphs (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; and
 - (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 any law 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; or

- (e) govern the protection of confidentiality of information sources or the processing of personal data.

ARTICLE 7.54

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 at least copyright or related rights.
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 7.55

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.
3. In considering a request for corrective measures, 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.

ARTICLE 7.56

Injunctions

1. 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.
2. Each Party shall ensure that their judicial authorities may issue an injunction against intermediaries whose services are used by a third party to infringe at least copyrights and related rights.

ARTICLE 7.57

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 7.55 (Corrective measures) or Article 7.56 (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 7.58

Damages

1. Each Party shall ensure that its judicial authorities shall have the authority to, on the 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. In the circumstances set out in paragraph 1, 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 subparagraph (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 engage, and did not have reasonable grounds to know it was engaging, in infringing activity, each Party may provide in its law that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

ARTICLE 7.59

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 7.60

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 7.61

Presumption of Authorship or Ownership

For the purposes of applying the measures, procedures and remedies provided for in Section 7.3 (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) subparagraph (a) applies *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

SUB-SECTION 7.3.3

CIVIL JUDICIAL PROCEDURES AND REMEDIES OF TRADE SECRETS

ARTICLE 7.62

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 paragraph 1 of Article 7.46 (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 in paragraph 1 of Article 7.46 (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 law, 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 law, 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 law, 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 paragraph 1 of Article 7.46 (Protection of Trade Secrets). Such specific measures may include, in accordance with each Party's respective law, 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; and

- (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 law:
- (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; or
 - (c) to protect a legitimate interest recognised by the law of that Party.

SUB-SECTION 7.3.4

BORDER ENFORCEMENT

ARTICLE 7.63

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 authority to suspend the release of or detain suspected goods. For the purposes of this Sub-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 endeavour to have in place electronic systems for the management by customs of the applications granted or recorded.
3. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee or destruction fee, that fee shall not be set at an amount that unreasonably deters recourse to these procedures.
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 may encourage 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

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 each other Party.

ARTICLE 7.64

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 Sub-Section, the Parties shall ensure consistency with their obligations under the 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.

SECTION 7.4
OTHER PROVISIONS

ARTICLE 7.65

Cooperation

Cooperation activities undertaken under this Chapter are subject to the availability of resources, and on request, and on terms and conditions mutually decided upon among the Parties. The Parties affirm that cooperation under this Chapter is additional to and without prejudice to other past, ongoing, and future cooperation activities, both bilateral and multilateral, among any of the Parties, including between their respective intellectual property offices.