

ANNEX 9A

REFERRED TO IN ARTICLE 9.1

PROTECTION OF INTELLECTUAL PROPERTY

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PROPERTY)

PROTECTION OF INTELLECTUAL PROPERTY

SECTION I

GENERAL PROVISIONS

ARTICLE 1

Scope of Protection

1. For the purposes of the Agreement, “intellectual property” comprises in particular copyrights (including the protection of computer programmes and compilations of data), as well as related rights, trademarks for goods and services, geographical indications (including appellations of origin) for goods, industrial designs, patents, plant varieties, topographies of integrated circuits, as well as undisclosed information as referred to in Sections 1 to 7 of Part II of the TRIPS Agreement. The Parties shall also protect indications of source for goods and services in accordance with the provisions of Chapter 9 (Protection of Intellectual Property) of the Agreement and this Annex.
2. The protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the Paris Convention of 20 March 1883 for the Protection of Industrial Property, as revised by the Stockholm Act of 1967 (Paris Convention).

ARTICLE 2

Exhaustion

Each Party shall be free to establish its own regime for the exhaustion of intellectual property rights subject to the relevant provisions of the TRIPS Agreement.

ARTICLE 3

International Conventions

1. The Parties reaffirm their obligations set out in the following multilateral agreements:
 - (a) TRIPS Agreement;

- (b) Paris Convention of 20 March 1883 for the Protection of Industrial Property, as revised by the Stockholm Act of 1967 (Paris Convention);
- (c) Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works, as revised by the Paris Act of 1971 (Berne Convention);
- (d) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention);
- (e) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- (f) Patent Cooperation Treaty of 19 June 1970, as revised by the Washington Act of 2001;
- (g) Protocol of 27 June 1989 relating to the Madrid Agreement concerning the International Registration of Marks;
- (h) Geneva Act of 1999 of the Hague Agreement concerning the International Registration of Industrial Designs;
- (i) International Convention for the Protection of New Varieties of Plants 1991, unless the Party concerned is already a member of the International Convention for the Protection of New Varieties of Plants 1978;¹ and
- (j) Marrakesh Treaty of 27 June 2013 to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled.

2. The Parties further reaffirm their obligations set out in the following multilateral agreements, provided they are a party to them, and where a Party is not yet a party to a following agreement, it shall make reasonable efforts to ratify or accede to it or comply with its substantive provisions:

- (a) Nice Agreement of 25 June 1957 concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as revised by the Geneva Act of 1979;²
- (b) World Intellectual Property Organisation (WIPO) Copyright Treaty of 20 December 1996; and
- (c) WIPO Performances and Phonograms Treaty of 20 December 1996 (WPPT).

¹ Liechtenstein is not yet a party to the Convention for the Protection of New Varieties of Plants (UPOV). The obligation in subparagraph 1(i) of Article 3 (International Conventions) shall become applicable to Liechtenstein once it has become a party to UPOV.

² A Party can fulfil this obligation by using the trademark classification system that is consistent with the Nice Agreement. For greater certainty, a Party shall use the updated version of the Nice Classification to the extent that the updated version has been published by WIPO, and in the case of Viet Nam, the official translation has been published.

3. A Party which is not yet a party to the following agreements may consider acceding to them:

- (a) Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of 29 October 1971; and
- (b) Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite of 21 May 1974.

4. The Parties agree to promptly hold expert meetings, upon request of any Party, subject to the availability of resources, on activities relating to the conventions referred to in this Article or to future international conventions on harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations, such as the WTO and the WIPO, as well as on relations of the Parties with non-Parties on matters concerning intellectual property.

ARTICLE 4

Intellectual Property and Public Health

The Parties recognize the importance of the Declaration on the TRIPS Agreement and Public Health, adopted in Doha on 14 November 2001 by the Ministerial Conference of the WTO (“Doha Declaration”). The Parties have reached the following understanding regarding this Annex:

- (a) This Annex shall be without prejudice to the Doha Declaration as well as the Amendment of the TRIPS Agreement as adopted by the WTO General Council on 6 December 2005.
- (b) In interpreting and implementing the rights and obligations under this Annex, the Parties are entitled to rely upon the Doha Declaration.

ARTICLE 5

Genetic Resources and Associated Traditional Knowledge

The Parties reaffirm their sovereign rights over their natural resources. Considering the close and traditional dependence on genetic resources of subsistence farmers, Indigenous Peoples and local communities embodying traditional lifestyles, the Parties also recall the rights and obligations under the Convention on Biological Diversity, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, the International Treaty on Plant Genetic Resources for Food and Agriculture, the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, and other relevant international agreements related to genetic resources and associated traditional knowledge.³

³ The Parties understand that they are only bound by the rights and obligations of the international agreements to which they are a party.

SECTION II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF

INTELLECTUAL PROPERTY RIGHTS

ARTICLE 6

Copyright and Related Rights

1. Without prejudice to the obligations set out in the international agreements to which the Parties are parties, each Party shall, in accordance with its domestic laws and regulations, grant and ensure adequate and effective protection to the authors of works and to performers, producers of phonograms and video recordings⁴ and broadcasting organisations for their works, performances, phonograms and video recordings, and broadcasts, respectively.

2. In addition to the protection provided for in paragraph 1, in accordance with its domestic laws and regulations, each Party shall grant and ensure protection for producers of phonograms and video recordings by providing the exclusive right of authorising the following acts:

- (a) the reproduction of their phonograms and video recordings in any manner or form;⁵
- (b) the making available to the public of the original and copies of their phonograms and video recordings through sale or other transfer of ownership;
- (c) the commercial rental to the public of the original and copies of their phonograms and video recordings;⁶ and
- (d) the making available to the public of their fixations, 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 them⁷.

⁴ The Parties understand that video recordings and videograms refers to the same.

⁵ Notwithstanding the provisions of this subparagraph, the Parties may provide that temporary reproduction carried out as part of a technological process, in the course of the operation of equipment for transmission in a network between third parties through an intermediary are exempted from the reproduction right.

⁶ Notwithstanding the provisions of this subparagraph, the Parties may provide for the right to obtain an equitable remuneration instead of an exclusive right of authorising commercial rental to the public, provided that such commercial rental is not giving rise to the material impairment of the exclusive rights of reproduction.

⁷ The Parties understand that this right is without prejudice to the right to a single equitable remuneration for the direct or indirect use of phonograms and video recordings published for commercial purposes for broadcasting or for any communication to the public that the Parties may provide for at national level.

3. Each Party shall ensure that a broadcasting organisation has at least the exclusive right of authorising the following acts:

- (a) the fixation of their broadcasts;
- (b) the reproduction of fixations of their broadcasts;⁸
- (c) the distribution to the public of fixations of their broadcasts; and
- (d) the rebroadcasting of their broadcasts by wireless means.

4. Each Party may, in its domestic laws and regulations, provide for the same kinds of limitations or exceptions with regard to the protection of producers of phonograms and video recordings, and broadcasting organisations as it provides for, in its domestic laws and regulations, in connection with the protection of copyright in literary and artistic works.

5. The term of protection to be granted to producers of phonograms and video recordings under the Agreement shall last, at least, until the end of a period of 50 years computed from the end of the year in which the fixation was published, or failing such publication within 50 years from fixation, 50 years from the end of the year in which the fixation was made.

6. The term of protection to be granted to broadcasting organizations under the Agreement shall last, at least, until the end of a period of 20 years computed from the end of the calendar year in which the broadcast took place.

ARTICLE 7

Trademarks

1. The Parties shall provide adequate and effective protection of trademarks for goods and services. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including combinations of words, personal names, letters, numerals, figurative elements, shapes of goods⁹, sounds and combinations of colours as well as any combination of such signs¹⁰, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, the Parties may make registrability depend on distinctiveness acquired through use. The Parties may require, as a condition of registration, that trademarks are capable of being represented on the register in a manner

⁸ Notwithstanding the provisions of this subparagraph, the Parties may provide that temporary reproduction carried out as part of a technological process, in the course of the operation of equipment for transmission in a network between third parties through an intermediary are exempted from the reproduction right.

⁹ For greater certainty, nothing in this paragraph requires a Party to protect inherent shapes of goods as a trademark.

¹⁰ A Party shall not be obliged, under the Agreement, to provide trademark protection for sounds in combination with other signs.

which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

2. The Parties shall grant the owner of a registered trademark 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 Parties making rights available on the basis of use.

3. Article 6*bis* of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark¹¹, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

4. No Party may require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

5. The Parties reaffirm the importance of, and shall give consideration to the principles contained in, the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 1999, and the WIPO Joint Recommendation Concerning Provisions on the Protection of Marks and other Industrial Property Rights in Signs, on the Internet, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 2001.

ARTICLE 8

Patents

1. The Parties shall at least ensure in their respective domestic law that patents are available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 3, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.¹²

¹¹ In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with relevant goods or services.

¹² The Parties understand that a Party may not issue a compulsory licence solely on the ground that the patented product is imported.

2. Each Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its domestic laws and regulations.
3. Each Party may also exclude from patentability:¹³
- (a) any invention of a method for treatment of the human or animal body by surgery or therapy or for diagnostic methods practised on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.
 - (b) plant varieties or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof.
4. The Parties shall provide a patent applicant with the opportunity to make amendments, corrections, and observations in connection with its application.¹⁴
5. Recognising the benefits of transparency in the patent system, the Parties shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the priority date.
6. If a pending patent application is not published promptly in accordance with paragraph 5, the Parties shall publish such application or the corresponding patent as soon as practicable.
7. The Parties shall provide that a patent applicant may request the early publication of an application prior to the expiration of the period mentioned in paragraph 5.
8. Each Party shall provide for an adequate and effective mechanism to compensate the patent owner for the unreasonable reduction in the effective patent life resulting from the granting of the first marketing authorisation in its respective territory.¹⁵

ARTICLE 9

Undisclosed Information

1. In order to implement Article 39 of the TRIPS Agreement, and in the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of

¹³ The Parties understand that this paragraph neither prevents nor requires a Party to accept patent claims in form of “Swiss-type” claims.

¹⁴ A Party may provide that such amendments do not go beyond the scope of the disclosure of the invention, as of the filing date.

¹⁵ The Parties understand that a Party is free to determine the modalities, including the conditions and limitations of the adequate and effective mechanism, as well as the scope of its applications under this paragraph.

the Paris Convention, each Party shall protect undisclosed information and data submitted to governments or governmental agencies in accordance with this Article.

2. The Parties, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, the Parties shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected from unfair commercial use.

3. Each Party shall provide that for data of a type referred to in paragraph 2 that is submitted to the competent authority of a Party, no other applicant for marketing approval may, without permission of the person that submitted the data, rely on that data in support of an application for marketing approval during a period of at least five years for pharmaceutical products from the date on which the competent authority of the Party granted approval to the person that produced the data for approval to market its product.

4. Each Party shall provide that for data¹⁶ of a type referred to in paragraph 2 that is submitted to the competent authority of a Party, that Party shall not permit third persons, without permission of the person that submitted the data, to rely on that data in support of an application for marketing approval of the same or a similar product during a period of at least ten years for new agricultural chemical products from the date on which the competent authority of the Party granted approval to the person that produced the data for approval to market its product.

5. For the purposes of this Article, a new agricultural chemical product is one that contains¹⁷ a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

ARTICLE 10

Industrial Designs

The Parties shall ensure in their domestic laws and regulations adequate and effective protection of industrial designs by providing in particular a period of protection of at least 15 years in total.¹⁸

¹⁶ Each Party confirms that the obligations of this paragraph apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (i) only the safety of the product; (ii) only the efficacy of the product; or (iii) both.

¹⁷ For the purposes of this Article, a Party may treat “contain” as meaning utilise. For greater certainty, for the purposes of this Article, a Party may treat “utilise” as requiring the new chemical entity to be primarily responsible for the product’s intended effect.

¹⁸ A Party may provide for a shorter period of design protection for component parts used for the repair of a product.

ARTICLE 11

Geographical Indications

1. The Parties shall ensure in their domestic laws and regulations adequate and effective means to protect geographical indications with regard to all goods.¹⁹
2. For the purposes of the Agreement, “geographical indications” are indications, which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of such a good is essentially attributable to its geographical origin.
3. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall provide legal means for interested parties to prevent the use of a geographical indication for goods not originating in the place indicated by the designation in question in a manner which misleads the public as to the geographical origin of those goods or which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.
4. The Parties shall provide legal means for interested parties to oppose the registration or to request the invalidation of a trademark which contains or consists of a geographical indication of a Party, if said trademark misleads the public as to the true place of origin of the goods.
5. The Parties²⁰ agree to review this Article by mutual agreement or in any event no later than three years after entry into force of this Agreement, in order to recognize and protect specific geographical indications of the Parties.²¹

ARTICLE 12

Indications of Source

1. The Parties shall ensure in their domestic laws and regulations adequate and effective means to protect indications of source, including but not limited to names, armorial bearings and flags of countries, with regard to all goods and services.²²
2. Indications of source shall be understood in accordance with the Paris Convention.
3. The Parties shall provide the legal means for interested parties to prevent the use of a reference to the geographical origin of goods not originating in the place indicated by the indication in question, *inter alia* where such indication is used as a trademark or trade name, in a manner which misleads the public as to the geographical origin of those

¹⁹ For greater certainty, a Party may exclude protection of geographical indications with regard to goods which are contrary to public order, morality, or law.

²⁰ For the purposes of this paragraph, the Parties, or a Party, means Viet Nam on the one side and Switzerland and Liechtenstein on the other side.

²¹ For greater certainty, the Parties understand that this does not prejudice the outcome of negotiations on specific geographical indications to be protected and recognised under the Agreement.

²² For greater certainty, a Party may exclude protection of indications of source with regard to goods and services which are contrary to public order, morality, or law.

goods or which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.²³

4. The Parties shall provide the legal means for interested parties to prevent the use of an indication of source for services, *inter alia* where such indication is used as a trademark or trade name, in a manner which misleads the public as to the geographical origin of those services or constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.²⁴

5. The Parties shall provide legal means for interested parties to prevent any incorrect or misleading use or registration of country names of a Party as trademarks.

6. The Parties, in accordance with their obligations under Article 6*ter* of the Paris Convention, shall prevent that armorial bearings, flags and other State emblems of a Party are used or registered as trademark, in non-compliance with the conditions laid down in the laws and regulations of that Party. This protection shall also apply to signs that are confusingly similar with armorial bearings, flags and other State emblems of the Parties.

²³ For greater certainty, this paragraph shall also apply if a country name of a Party is translated or used in a modified form (e.g. intentional misspellings or similar alterations) and the translation or the modified form is used in a manner which misleads the public as to the geographical origin of goods or constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

²⁴ For greater certainty, this paragraph shall also apply if a country name of a Party is translated or used in a modified form (e.g. intentional misspellings or similar alterations) and the translation or the modified form is used in a manner which misleads the public as to the geographical origin of services or constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

SECTION III

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

ARTICLE 13

Acquisition and Maintenance

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the Parties shall ensure that the procedures for granting or registration are at least of the same level as that provided in the TRIPS Agreement, in particular in Article 62.

SECTION IV

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

ARTICLE 14

General

The Parties shall provide in their respective domestic laws and regulations for enforcement provisions for rights covered by Article 1 (Scope of Protection) that shall at least be of the same level as that provided in the TRIPS Agreement, in particular in Articles 41 to 61.

ARTICLE 15

Suspension of Release

1. The Parties shall adopt procedures to enable a right holder, who has valid grounds for suspecting that importation or exportation of goods infringing intellectual property rights may take place, to lodge an application in writing with the competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods.
2. The Parties shall also adopt procedures with respect to goods for import or export, under which a right holder can record intellectual property rights with the customs authorities, for the purpose of ensuring appropriate controls in order to identify goods suspected of infringing those recorded intellectual property rights.
3. The customs authorities shall, in accordance with domestic procedures, suspend the release of the goods suspected of infringing intellectual property rights for which an application was filed as per the procedure under paragraph 1.
4. Each Party shall provide that its competent authorities may initiate border measures *ex officio* at least with respect to goods under customs control that are:
 - (a) imported; or
 - (b) being exported,

and that are suspected of being counterfeit goods in terms of trademarks²⁵ and geographical indications²⁶, as well as pirated copyright goods²⁷.

5. The Parties shall provide that their customs authorities, on the basis of risk analysis techniques, may be active in targeting and identifying shipments containing import and export goods suspected of infringing an intellectual property right, in accordance with this Article.

6. The Parties shall authorise their customs authorities to inform the right holder in order to enable the lodging of an application according to paragraph 1.

7. It is understood that there shall be no obligation to apply procedures set forth in this Article to the suspension of the release of goods put on the market by or with the consent of the right holder, or to goods in transit.

8. In case of suspension pursuant to paragraph 1 with respect to importation into or exportation from the customs territory of a Party, the competent authorities of the Party suspending the release of goods shall notify the right holder of the suspension including necessary information to enforce his or her rights, such as the name and addresses of the consignor or consignee, and the importer or exporter, as applicable, and the nature and quantity of the goods in question, subject to the domestic laws and regulations of the Parties pertaining to the confidentiality of information, and privacy.

9. Each Party shall ensure that the competent authorities, administrative or judicial, on request from the right holder, have the authority to decide that the goods, the release of which has been suspended pursuant to this Article, shall be held seized in accordance with domestic laws and regulations of a Party. Where the right holder pursues judicial proceedings, customs authorities shall comply with the court ruling and, where applicable, continue the suspension of release until a final decision is reached in the infringement dispute.

10. Each Party shall provide that if the competent authorities have made a determination that the suspected goods infringe an intellectual property right, procedures are made available to enable the right holder to seek recovery of, and indemnify against, costs and expenses that the right holder has incurred in connection with the exercise of

²⁵ “Counterfeit trademark goods” means goods, including packaging, bearing without authorisation a trademark which is identical with the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and the importation of which thereby infringes or the exportation of which would have constituted an infringement of the rights of the owner of the trademark in question according to the domestic laws and regulations of the Party where the goods are found.

²⁶ “Counterfeit geographical indication goods” means goods, including packaging, unlawfully bearing a geographical indication identical with the geographical indication validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a geographical indication, and the importation of which thereby infringes or the exportation of which would have constituted an infringement of the rights of the geographical indication in question according to the domestic laws and regulations of the Party where the goods are found.

²⁷ “Pirated copyright goods” means goods which are copies made without the consent of the right holder or person duly authorised 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, as well as importation or exportation, would have constituted an infringement of a copyright or a related right under the domestic laws and regulations of the Party of importation or exportation, respectively.

rights and remedies provided in this Article, in accordance with domestic laws and regulations of a Party.

11. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature in travellers' personal luggage or sent in small consignments.²⁸

ARTICLE 16

Removal from Commerce

1. Each Party shall ensure that the competent judicial authorities have the authority to order, upon request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort in such a manner as to minimise the risks of further infringements:

- (a) the recall from the channels of commerce;
- (b) the disposal outside the channels of commerce; or
- (c) the destruction,

of goods that they have found to be infringing an intellectual property right. The competent judicial authorities may also order destruction of materials and implements, the predominant use of which has been in the creation or manufacture of the infringing goods, or their disposal outside the channels of commerce in such a manner as to minimise the risks of further infringement.

2. The competent judicial authorities shall have the authority to order that the remedies referred to in paragraph 1, at least for the destruction, including the removal from the channels of commerce for destruction, be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

ARTICLE 17

Provisional Measures and Injunctions

1. Each Party shall ensure that its judicial authorities, upon request by a party who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, have the authority to order prompt and effective provisional measures:

- (a) to prevent an infringement of any intellectual property right from occurring, and, in particular, to prevent the entry into, and the movement within, the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance; and

²⁸ For greater certainty, nothing in this paragraph prevents a Party to apply this Article to small consignments if they amount to import or export on a commercial scale.

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures as referred to in paragraph 1 without the other party being heard 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. On request for provisional measures, the judicial authorities shall act expeditiously and make a decision without undue delay, in accordance with domestic laws and regulations.

3. Each Party shall ensure that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities 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 infringe an intellectual property right, immediately after customs clearance of such goods.

ARTICLE 18

Right of Inspection

1. Without prejudice to that Party's domestic laws and regulations pertaining to the privacy or the confidentiality of information, the competent authorities shall give the applicant for the suspension of goods and other persons involved in the suspension the opportunity to inspect goods that has been suspended by the customs authorities.

2. When examining goods, the competent authorities may take samples and, according to the domestic laws and regulations in force in the Party concerned, allow the right holder to have access to such samples for the purpose of analysis and of facilitating the subsequent procedure. Where circumstances allow, samples must be returned on completion of the technical analysis and, where applicable, before goods are released or their detention is lifted.

3. The declarant, holder or owner of the suspected infringing goods may be present at the inspection with a view to protecting its trade secrets.

ARTICLE 19

Civil Remedies

Each Party shall provide that:

- (a) in civil judicial proceedings, its judicial authorities have the authority to order the infringer, who knowingly or with reasonable grounds to know engaged in infringing activity of intellectual property rights, to pay the right holder damages adequate to compensate for the actual injury the right holder has suffered because of the infringement;
- (b) in determining the amount of damages for intellectual property rights infringement, its judicial authorities have the authority to take into account

all appropriate aspects, such as the actual damage or other negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer²⁹, establishing a fair licence fee, and, in appropriate cases, elements other than economic factors³⁰ such as moral prejudice.

ARTICLE 20

Legal Costs

Each Party shall provide that the competent judicial authorities, as a general rule and, where appropriate, have the authority to order that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's domestic laws and regulations.

ARTICLE 21

Criminal Remedies

Each Party 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.

ARTICLE 22

Security or Equivalent Assurance

The competent authorities of the Parties 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. The Parties may fulfil this obligation, in accordance with domestic laws and regulations, by requiring an applicant to declare to accept liability towards the persons involved, instead of providing a security or equivalent assurance.

ARTICLE 23

Cooperation in the Field of Intellectual Property

The Parties, recognising the growing importance of intellectual property rights as a factor of social, economic and cultural development, agree to enhance their cooperation in the field of intellectual property rights.

²⁹ The calculation of unfair profits made by the infringer shall not be duplicated in calculating lost profits.

³⁰ The term “elements other than economic factors” may include moral prejudice caused by the infringement of moral rights of inventors or authors.