

CHAPTER 13

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS AND PRINCIPLES

ARTICLE 13.1

General provisions

1. Each Party affirms the rights and obligations to each other under the WTO, the TRIPS Agreement and any other multilateral agreement related to intellectual property to which it is a Party.
2. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice, in a manner consistent with the objectives and principles of the TRIPS Agreement and this Chapter.

ARTICLE 13.2

Objectives

The objectives of this Chapter are to:

- (a) facilitate access, production and commercialisation of innovative and creative products and foster trade and investment between the Parties, contributing to a more sustainable, equitable and inclusive economy for the Parties;
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights that provides incentives and rewards to innovation while contributing to the effective transfer and dissemination of technology and favouring social and economic welfare and the balance between the rights of the holders and the public interest; and
- (c) foster measures that will help the Parties to promote research and development, and access to knowledge, including to a rich public domain.

ARTICLE 13.3

Nature and scope of obligations

1. For the purposes of this Agreement, "intellectual property rights" refer to all categories of intellectual property that are the subject of Sections 1 to 7 of Part II of the TRIPS Agreement and of Articles 13.9 to 13.43 of this Agreement.

2. Protection of intellectual property includes protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property, done in Paris on 20 March 1883, as last revised at Stockholm on 14 July 1967 (hereinafter referred to as the "Paris Convention").

3. Nothing in this Chapter shall prevent a Party from adopting measures necessary to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with this Chapter.

4. A Party shall not be obliged to afford through its law more extensive protection than is required by this Chapter. This Chapter does not preclude a Party from applying, through its law, higher standards for the protection and enforcement of intellectual property rights, provided that they do not violate this Chapter.

ARTICLE 13.4

Principles

1. Each Party recognises that the protection and enforcement of intellectual property rights can and must be done in a manner conducive to economic, social and scientific progress. Each Party shall ensure the enforcement of intellectual property rights within its own legal system and practice.

2. In formulating or amending its laws and regulations, each Party may establish exceptions and flexibilities permitted by the multilateral instruments to which the Parties are signatories.

3. The Parties reaffirm the provisions in the TRIPS Agreement regarding competition.
4. The Parties support the attainment of the United Nations SDGs.
5. The Parties support World Health Assembly Resolution WHA 60.28 and the Pandemic Influenza Preparedness Framework adopted at the sixty-fourth World Health Assembly.
6. The Parties recognise the importance of promoting the implementation of Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the World Health Assembly on 24 of May 2008 (Resolution WHA 61.21 as amended by Resolution WHA 62.16).
7. The Parties affirm the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (hereinafter referred to as "WIPO").
8. Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party shall make best efforts to ensure that the procedures for grant or registration of the right are conducive to granting or registration within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

ARTICLE 13.5

National treatment

Each Party shall accord to the nationals¹ of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection² of intellectual property rights covered by this Chapter, subject to the exceptions provided for in Articles 3 and 5 of the TRIPS Agreement³.

ARTICLE 13.6

Protection of biodiversity and traditional knowledge

1. The Parties recognise the importance and value of biological diversity and its components and of the associated traditional knowledge, innovations and practices of indigenous and local communities⁴. The Parties furthermore affirm their sovereign rights over their natural resources and their rights and obligations as established by the Convention of Biological Diversity of 1992, done in Rio de Janeiro on 5 June 1992 (hereinafter referred to as "CBD") with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilisation of these genetic resources.

¹ For the purposes of this Chapter, "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 or in multilateral agreements concluded and administered under the auspices of WIPO, as appropriate, to which a Party is a contracting party.

² For the purposes of Article 13.5, "protection" includes matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

³ In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided under this Chapter.

⁴ For the purposes of Article 13.6, "indigenous and local communities" may include descendants of enslaved Africans and small-scale farmers.

2. The Parties affirm, recognising the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions, that access to genetic resources for food and agriculture shall be subject to specific treatment in accordance with the International Treaty on Plant Genetic Resources for Food and Agriculture, done in Rome on 3 November 2001 (hereinafter referred to as "International Treaty on Plant Genetic Resources for Food and Agriculture").

3. The Parties may, by mutual agreement, review this Article subject to the results and conclusions of multilateral discussions.

ARTICLE 13.7

Exhaustion

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

ARTICLE 13.8

TRIPS Agreement and public health

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

2. Each Party shall implement Article 31bis of the TRIPS Agreement, as well as the Annex and Appendix to the Annex thereto, which entered into force on 23 January 2017.

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS⁵

ARTICLE 13.9

International agreements

Each Party affirms its rights and obligations under the following international agreements, taking into consideration that agreements are not binding on those that are not parties to them:

- (a) the Berne Convention for the Protection of Literary and Artistic Works, done in Berne on 9 September 1886, as amended on 28 September 1979 (hereinafter referred to as the "Berne Convention");
- (b) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 18 May 1964 (hereinafter referred to as the "Rome Convention");

⁵ The Parties shall be free, in their laws and regulations, to use different names for the rights set out in this Sub-section, provided the agreed level of protection is ensured.

- (c) 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;
- (d) the WIPO Copyright Treaty, done in Geneva on 20 December 1996;
- (e) the WIPO Performances and Phonograms Treaty, done in Geneva on 20 December 1996; and
- (f) the Beijing Treaty on Audiovisual Performances, done in Beijing on 24 June 2012.

ARTICLE 13.10

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; and
- (d) 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.

ARTICLE 13.11

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 broadcasting by wireless means or by wire means if the laws and regulations of a Party provides for it, and the communication to the public of their performances, except if the performance is itself already a broadcast performance or is made from a fixation; and
- (e) the making available to the public of fixations of their performances in such a way that members of the public may access them from a place and at a time individually chosen by them.

ARTICLE 13.12

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; and
- (c) the making available to the public of their phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

ARTICLE 13.13

Broadcasting organisations

Each Party may stipulate the legal requirements in its laws and regulations as to what is to be considered a broadcasting organisation and shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

- (a) the fixation of their broadcasts;

- (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;
- (c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether these 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 of their broadcasts⁶; and
- (e) the rebroadcasting of their broadcasts by wireless means, or if the Party's laws and regulations so provide, retransmission by wire 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 fee⁷.

⁶ Points (c) and (d) of Article 13.13 shall not apply to a Party to the extent that that Party does not provide in its laws and regulations for the rights set out therein. In such case, the other Parties may exclude broadcasting organisations of that Party from the protection granted in points (c) and (d) of Article 13.13, and the obligation under Article 13.5 shall not apply in respect of the rights provided for in points (c) and (d) of Article 13.13.

⁷ Each Party may grant more extensive rights as regards the communication to the public by broadcasting organisations.

ARTICLE 13.14

Right to remuneration for broadcasting and communication to the public of phonograms published for commercial purposes

1. Each Party shall provide a right in order to ensure that 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 a phonogram, is used for broadcasting by wireless means or for any communication to the public⁸.
2. Each Party shall provide that the remuneration referred to in paragraph 1 be claimed from the user by the performer or by the producer of a phonogram or by both. 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 are to share such remuneration.

⁸ Each Party may grant more extensive rights, in place of the right to remuneration or in addition to this right, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

ARTICLE 13.15

Term of protection

1. The rights of the author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for at least 50 (fifty) years after the author's death or, if the Party's laws and regulations so provide, for 70 (seventy) years after the author's death. With respect to photographic and cinematographic works, each Party shall establish the term of protection in accordance with its laws and regulations.
2. In the case of a work of joint authorship, the terms referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for at least 50 (fifty) years after the work is lawfully made available to the public or, if the Party's laws and regulations so provide, for 70 (seventy) years after the work is lawfully made available to the public. Notwithstanding the first sentence, if the pseudonym adopted by the author leaves no doubt as to the author's identity, or if the author discloses his or her identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
4. The rights of performers in a performance fixed otherwise than in a phonogram shall expire not less than 50 (fifty) years after the date of the performance.

5. The rights of performers and producers of phonograms shall not expire for at least 50 (fifty) years after the fixation is lawfully published or lawfully communicated to the public or, if the Party's laws and regulations so provide, 70 (seventy) years after the fixation is lawfully published or lawfully communicated to the public⁹. Each Party may, in accordance with its laws and regulations, adopt effective measures to ensure that the profits generated during the 20 (twenty) years of protection beyond 50 (fifty) years are fairly shared between performers and producers.

6. The term of protection of the rights of the broadcasting organisations shall be at least 20 (twenty) years from the first broadcast or, if a Party's laws and regulations so provide, 50 (fifty) years from the first broadcast.

7. The terms laid down in this Article shall be calculated from the 1st (first) of January of the year following the event which gives rise to them.

8. Each Party may provide for longer terms of protection than those provided for in this Article.

⁹ Each Party may provide that the publication or lawful communication to the public of the fixation of the performance or of the phonogram must occur within a defined period of time of the date of the performance (in the case of the performers) or the date of the fixation (in the case of producers of phonograms).

ARTICLE 13.16

Resale right

1. Each Party may provide, for the benefit of the author of graphic or plastic art, a resale right, defined as an inalienable right, which cannot be waived, even in advance, to receive a percentage of the price obtained from any resale of that work, after the first transfer of that work by the author.
2. The right referred to in paragraph 1 applies 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 does not apply to acts of resale if the seller has acquired the work directly from the author less than 3 (three) years before that resale and if the resale price does not exceed a minimum amount.
4. Each Party may provide that authors who are nationals of the other Party and their successors in title enjoy the resale right in accordance with this Article and the laws and regulations of the Party concerned provided that the laws and regulations of the country of which the author or the author's successor in title is a national permits resale right protection in that country for authors from the Party concerned and their successors in title.

ARTICLE 13.17

Cooperation on collective management of rights

1. The Parties shall promote cooperation, transparency and non-discrimination of collective management organisations, in particular as regards the revenues they collect, the deductions they apply to such revenues, the use of the royalties collected, the distribution policy and their repertoire, including in the digital environment.
2. If a collective management organisation established in the territory of a Party represents a collective management organisation established in the territory of another Party by way of a representation agreement, the former Party shall seek to ensure that the representing collective management organisation:
 - (a) does not discriminate against entitled members of the represented organisation; and
 - (b) pays the amounts owed to the represented organisation accurately, regularly, diligently and in a fully transparent manner and provides the represented organisation with information on the amounts of revenues collected on its behalf and the deductions made.

ARTICLE 13.18

Exceptions and limitations

1. Each Party shall confine exceptions and limitations to the rights in this Sub-Section 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.
2. Each Party shall exempt from the reproduction right temporary acts of reproduction which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:
 - (a) a transmission in a network between third parties by an intermediary; or
 - (b) a lawful use of a work or other subject matter to be made, and which have no independent economic significance.

ARTICLE 13.19

Protection of technological measures

1. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by right holders in connection with the exercise of their rights under this Sub-Section and that restrict acts which are not authorised by the right holders concerned or permitted by law.

2. Each Party may, if permissible under its law, ensure that right holders make available to the beneficiary of an exception or limitation the means for benefiting, to the extent necessary, from that exception or limitation.

ARTICLE 13.20

Obligations concerning rights management information

1. 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 Sub-Section, 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.

2. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts, if that person knows, or has reasonable grounds to know, that by so doing that person is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights:

- (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 under this Sub-Section from which electronic rights-management information has been removed or altered without authorisation.

3. Paragraph 1 applies when any of the items of information referred to in that paragraph 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 Sub-Section.

4. The Parties shall ensure that the obligations set out in this Article do not harm non-infringing uses.

SUB-SECTION 2

TRADEMARKS

ARTICLE 13.21

International agreements

Each Party shall:

(a) comply with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957 (hereinafter referred to as "Nice Classification")¹⁰; and

¹⁰ This obligation only applies to trademarks registered after the date of adoption of the Nice Classification criteria or of accession to the instrument.

- (b) make best efforts to accede to the Protocol relating to the Madrid Agreement concerning the International Registration of Marks, done in Madrid on 27 June 1989, as last amended on 12 November 2007.

ARTICLE 13.22

Registration procedure

1. Each Party shall establish a system for the registration of trademarks in which each final negative decision, including the partial refusal of registration, issued by the relevant trademark administration, shall be notified in writing, duly reasoned and open to challenge.
2. Each Party shall provide for the possibility to oppose applications to register trademarks or, if appropriate, the registration of trademarks. Such opposition proceedings shall be adversarial.
3. Each Party shall provide a publicly available electronic database of applications and registrations of trademarks.

ARTICLE 13.23

Rights conferred by a trademark

A registered trademark shall confer on the proprietor the exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having the proprietor's consent from using in the course of trade:

- (a) any sign which is identical to the trademark in relation to goods or services which are identical to those for which the trademark is registered; and
- (b) any sign which is identical to, or similar to, the trademark and is used in relation

to goods or services which are identical to, or similar to, the goods or services for which the trademark is registered, if there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trademark.

ARTICLE 13.24

Well-known trademarks

1. Article 6bis of the Paris Convention shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, each Party shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party concerned which has been obtained as a result of the promotion of the trademark.
2. Article 6bis of the Paris Convention shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that the 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 registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.
3. For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall take into due consideration the principles established in the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

ARTICLE 13.25

Bad faith applications

Each Party shall provide that a trademark may be declared invalid if the application for the registration thereof was made in bad faith by the applicant. Each Party may also provide that such a trademark shall not be registered.

ARTICLE 13.26

Exceptions to the rights conferred by a trademark

1. Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms including in the case of geographical indications, and may provide other limited exceptions if such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.
2. The trademark shall not entitle the owner to prohibit a third party from using the following when used in accordance with honest practices in industrial and commercial matters:
 - (a) his or her own name or address if that third party is a natural person;
 - (b) 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 trademark, if it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts.

SUB-SECTION 3

DESIGNS

ARTICLE 13.27

International agreements

Each Party shall make best efforts to accede to the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs, done at Geneva on 2 July 1999.

ARTICLE 13.28

Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new and original¹¹ ¹². This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with this Sub-Section.

¹¹ For the purposes of this Article, a Party may consider that a design having individual character is original.

¹² Argentina shall provide for the protection of independently created designs that are new or original.

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

ARTICLE 13.29

Term of protection

The duration of protection available, including renewals, shall amount to at least 15 (fifteen) years from the date of filing the application.

ARTICLE 13.30

Protection of unregistered designs

Each Party may establish legal means to prevent the use of unregistered designs.

ARTICLE 13.31

Exceptions and exclusions

1. Each Party may establish limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the holder of the protected design, taking account of the legitimate interests of third parties.
2. The protection of designs shall not extend to designs dictated essentially by technical or functional considerations.

ARTICLE 13.32

Relation to copyright

Each Party shall, to the extent that it is provided for in its laws and regulations, ensure that a design shall also be eligible for protection under its law of copyright as from the date on which the design was created or fixed in any form. Each Party shall determine the extent and conditions of such protection, including the level of originality required.

SUB-SECTION 4

GEOGRAPHICAL INDICATIONS

ARTICLE 13.33

Protection of geographical indications

1. This Sub-Section applies to the recognition and protection of geographical indications originating in the territory of the Parties.
2. The Parties shall take the necessary measures to implement the protection of geographical indications referred to in paragraph 1 in their territories, determining the appropriate method for such implementation within their own legal system and practice.
3. Geographical indications of a Party shall only be subject to this Article if they are protected as geographical indications in the territory of the Party of origin under its system of registration and protection of geographical indications.
4. Each Party, having examined the legislation of the other Party in Annex 13-A and the geographical indications in Annex 13-B, and having completed an objection procedure or public consultation related to the geographical indications in Annex 13-B, undertake to protect since the date of entry into force of this Agreement those geographical indications in accordance with the level of protection laid down in this Sub-Section including the specific level of protection, notably as set out in Article 13.35(8) and Appendix 13-B-1.

5. Each Party may protect geographical indications for products other than agricultural foodstuffs, wines, spirit drinks or aromatised wines in its laws and regulations. The Parties acknowledge that geographical indications listed in Annex 13-D are protected as geographical indications in the country of origin.

ARTICLE 13.34

Addition of new geographical indications

By request of a Party, and once completed the steps described in Article 13.33(4), the Subcommittee on intellectual property rights referred to under Article 13.59 may recommend to the Trade Council to adopt a decision, pursuant to point (f) of Article 22.1(6) to add new geographical indications to Annex 13-B, including in order to transfer the geographical indications listed in Annex 13-C to Annex 13-B.

ARTICLE 13.35

Scope of protection of geographical indications

1. Each Party shall provide, according to its laws and regulations, the legal means for interested parties to prevent:

- (a) the use of a geographical indication of the other Party listed in Parts 1 and 2 of Annex 13-B for any product that falls within the relevant product class, as specified in Section 3 of Annex 13-B and that either:
 - (i) does not originate in the country of origin specified in Annex 13-B for that geographical indication; or
 - (ii) originates in the country of origin specified in Annex 13-B for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party that would apply

if the product was for consumption in the other Party;

- (b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than its true place of origin, in a manner which misleads the public as to the geographical origin of the good;
- (c) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention;
- (d) any direct or indirect commercial use of a protected name for comparable products not complying with the product specification of the protected name, or that exploits the reputation of a geographical indication;
- (e) the use of a geographical indication not originating in the place indicated by the geographical indication, even if the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like; and
- (f) any misuse, imitation or deceiving use of a protected name of a geographical indication; or any false or misleading indication of a protected name of a geographical indication; or any practice liable to mislead the consumer as to the true origin, provenance and nature of the product.

2. Regarding the relationship between trademarks and geographical indications:

- (a) if a geographical indication is protected under this Sub-Section, each Party shall refuse the registration of a trademark for the same or a similar product the use of which would contravene this Sub-Section, provided that an application for registration of the trademark was submitted after the date of application for protection of the geographical indication on the territory concerned; trademarks registered in breach of this paragraph shall be invalidated in accordance with the law of the Parties;

- (b) for geographical indications listed in Annex 13-B at the date of entry into force of this Agreement, the date of submission of the application for protection referred to in point (a) shall be the date of the publication of the opposition procedure or of the public consultation in the respective territories;
- (c) for geographical indications referred to in Article 13.34, the date of submission of the application for protection shall be the date of the transmission of a request to another Party to protect a geographical indication;
- (d) without prejudice to point (e), each Party shall protect the geographical indications referred to in Annex 13-B also if a prior trademark exists; a prior trademark shall mean a trademark which has been applied for, registered or established by use, if that possibility is provided for by the laws and regulations of the Party concerned, in good faith in the territory of one Party before the date of application for protection of the geographical indication, as referred to in paragraph 1, is submitted by the other Party under this Agreement; such prior trademark may continue to be used, renewed and be subject to variations which may require the filing of new trademark applications, notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the trademark law under which the trademark has been registered or established; neither the prior trademark nor the geographical indication shall be used in a way that would mislead the consumer as to the nature of the intellectual property right concerned; and
- (e) a Party shall not be obliged to protect a geographical indication in light of a famous, reputed or well-known trademark, if the protection is liable to mislead consumers as to the true identity of the product.

3. Nothing in this Sub-Section shall prevent the use by a Party, with respect to any product, of a customary name of a plant variety or an animal breed, existing in the territory of that Party¹³.

4. Nothing in this Sub-Section shall prevent the use by a Party of an individual component of a multi-component term that is protected as a geographical indication in the territory of that Party, if such an individual component is a customary term in the common language as the common name for the associated good¹⁴.

5 Nothing in this Sub-Section shall require a Party to protect a geographical indication which is identical to the customary term in the common language as the common name for the associated good in the territory of that Party.

6. If a translation of a geographical indication is identical with, or contains within it, a customary term in the common language as the common name for a product in the territory of a Party, or if a geographical indication is not identical with it but contains within it such a term, this Sub-Section shall not prejudice the right of any person to use that term in association with that product.

7. With regard to homonymous geographical indications:

- (a) in the case of existing or future homonymous geographical indications of the Parties for products falling within the same product category¹⁵, both shall coexist per se, and each Party shall determine the practical conditions under which the homonymous indications in question shall be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled; and
- (b) if a Party, in the context of negotiations with a third country, proposes to protect a

¹³ The Parties define in Appendix 13-B-1 the plant varieties and animal breeds the use of which shall not be prevented.

¹⁴ The Parties define in Appendix 13-B-1 the terms for which protection is not sought or granted.

¹⁵ In accordance with the Nice Classification and its amendments.

geographical indication from that third country, and the name is homonymous with a geographical indication of the other Party, the latter shall be informed and be given the opportunity to comment before the name is protected.

8. Without prejudice to Articles 13.35(1) to 13.35(7), a specific level of protection is defined for the following cases of geographical indications listed in Annex 13-B¹⁶:

(a) "Genièvre", "Jenever" or "Genever": the protection of the geographical indication "Genièvre", "Jenever" or "Genever" shall not prevent prior users of the term "Ginebra" in the territory of Argentina who have used the term in good faith and in a continuous manner for at least 5 (five) years prior to the publication for opposition of the geographical indication "Genièvre", "Jenever" or "Genever" in Argentina, and prior users of the term "Genebra" in the territory of Brazil who have used the term in good faith and in a continuous manner prior to the publication for opposition of the geographical indication "Genièvre", "Jenever" or "Genever" in Brazil, from continuing to use these terms, provided these products are not commercialised using graphics, names, pictures or flags as references to the genuine origin of the European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product;

¹⁶ For greater certainty, the specific level of protection by each Signatory MERCOSUR State as defined in Article 13.35(8) applies only in favour of those prior users that are part of the prior users' list of that particular Signatory MERCOSUR State.

- (b) "Queso Manchego": the protection of the geographical indication "Queso Manchego" for cheeses elaborated in Spain in accordance with the applicable technical specifications, using sheep's milk, shall not prevent prior users of the term "Queso Manchego" in the territory of Uruguay who have used the term in good faith and in a continuous manner for at least 5 (five) years prior to the publication for opposition of the geographical indication "Queso Manchego", if related to cheeses elaborated with cow's milk, from continuing to use this term provided these products are not commercialised using graphics, names, pictures or flags as references to the protected European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name, and is differentiated from it in a non-ambiguous manner as regards the origin and the composition of the product;
- (c) "Grappa": the protection of the geographical indication "Grappa" shall not prevent prior users of the term "Grappamiel" or "Grapamiel" in the territory of Uruguay who have used the term in good faith and in a continuous manner prior to the publication for opposition of the geographical indication "Grappa" from continuing to use these terms, provided these products are not commercialised using graphics, names, pictures or flags as references to the protected European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product;

- (d) "Steinhäger": the protection of the geographical indication "Steinhäger" shall not prevent prior users of the term "Steinhäger" in the territory of Brazil who have used the term in good faith and in a continuous manner prior to the publication for opposition of the geographical indication "Steinhäger" from continuing to use this term, provided these products are not commercialised using graphics, names, pictures or flags as references to the protected European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product;
- (e) "Parmigiano Reggiano":
 - (i) the protection of the geographical indication "Parmigiano Reggiano" shall not prevent prior users of the term "Parmesão" in the territory of Brazil and of the term "Parmesano" in the territories of Argentina, Paraguay and Uruguay who have used these terms in good faith and in a continuous manner prior to the publication for opposition of the geographical indication "Parmigiano Reggiano" from continuing to use these terms, provided these products are not commercialised using graphics, names, pictures or flags as references to the protected European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product;

- (ii) the protection of the geographical indication "Parmigiano Reggiano" shall not prevent prior users of the term "Reggianito" in the territory of Argentina who have used this term in good faith and in a continuous manner prior to the publication for opposition of the geographical indication "Parmigiano Reggiano", and in the territories of Paraguay and Uruguay who have used this term in good faith and in a continuous manner for at least 5 (five) years prior to the publication for opposition of the geographical indication "Parmigiano Reggiano", from continuing to use this term, provided these products are not commercialised using graphics, names, pictures or flags as references to the protected European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product;
- (f) "Fontina": the protection of the geographical indication "Fontina" shall not prevent prior users of the term "Fontina" in the territories of Argentina, Brazil, Paraguay and Uruguay who have used the term in good faith and in a continuous manner for at least 5 (five) years prior to the publication for opposition of the geographical indication "Fontina", from continuing to use this term, provided these products are not commercialised using graphics, names, pictures or flags as references to the protected European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product;

(g) "Gruyère" (France):

- (i) the protection of the geographical indication "Gruyère" (France) shall not prevent prior users of the terms "Gruyère" and "Gruyere" in the territories of Argentina, Brazil, Paraguay and Uruguay who have used the term in good faith and in a continuous manner for at least 5 (five) years prior to the publication for opposition of the geographical indication "Gruyère" (France), from continuing to use these terms, provided these products are not commercialised using graphics, names, pictures or flags as references to the protected European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product;
- (ii) the protection of the geographical indication "Gruyère" (France) shall not prevent prior users of the terms "Gruyerito" and "Gruyer" in the territory of Uruguay who have used the term in good faith and in a continuous manner for at least 5 (five) years prior to the publication for opposition of the geographical indication "Gruyère" (France) from continuing to use these terms, provided these products are not commercialised using graphics, names, pictures or flags as references to the protected European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product;

- (h) "Grana Padano": the protection of the geographical indication "Grana Padano" shall not prevent prior users of the term "Grana" in the territory of Brazil who have used the term in good faith and in a continuous manner for at least 5 (five) years prior to the publication for opposition of the geographical indication "Grana Padano" from continuing to use this term, provided these products are not commercialised using graphics, names, pictures or flags as references to the protected European geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards the origin of the product; and
- (i) "Gorgonzola": the protection of the geographical indication "Gorgonzola" shall not prevent prior users of the term "Gorgonzola" in the territory of Brazil who have used the term in good faith prior to the publication for opposition from continuing to use this term, provided these products are not commercialised using graphics, names, pictures or flags as references to the genuine origin of the geographical indication and provided the term is displayed in a font size substantially smaller, while readable, than the brand name and is differentiated from it in a non-ambiguous manner as regards to the origin of the product.

9. Prior users as referred to in points (a) to (i) of paragraph 8 are listed in Annex 13-E. Succession of prior users and the effects thereof shall be determined by the domestic laws and regulations of each Signatory MERCOSUR State.

10. Protected geographical indications listed in Annex 13-B shall not become generic in the territories of the Parties.

11. Nothing in this Chapter shall create an obligation for the Parties to protect geographical indications which are not or cease to be protected in their place of origin.

12. This Chapter shall not prejudice the right of any person to make commercial use of that person's name or the name of that person's predecessor in business, except if such name is used in such a manner as to mislead the public.

ARTICLE 13.36

Right of use of geographical indications

1. Any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirit drinks which conform to the corresponding specification may use a geographical indication under this Agreement.
2. Once a geographical indication is protected under this Agreement, the use of such protected name shall not be subject to any registration of users or further charges.

ARTICLE 13.37

Enforcement of protection

Each Party shall provide the legal means for interested parties to seek enforcement of the protection provided for in Article 13.35 via appropriate administrative and judicial action within its own legal system and practice.

ARTICLE 13.38

Import, export and marketing

Import, export and marketing of products carrying the names listed in Annex 13-B shall comply with the laws and regulations applying in the territory of the Party in which the products are placed on the market.

ARTICLE 13.39

Cooperation and transparency on geographical indications

1. The Subcommittee on intellectual property rights, referred to in Article 13.59, shall monitor the proper functioning of this Sub-Section and may consider any matter related to its implementation and operation. It shall be responsible for:

- (a) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications; and
- (b) cooperating on the development of alternative names for products that were once marketed by producers of a Party with terms corresponding to geographical indications of the other Party, especially in cases subject to a phasing-out.

2. The Subcommittee on intellectual property rights may recommend to the Trade Council to amend, pursuant to point (f) of Article 22.1(6):

- (a) Annex 13-A as regards the references to the law applicable in the Parties;
- (b) Annex 13-B as regards geographical indications and exchanging information for that purpose;
- (c) Annex 13-C as regards geographical indications; and
- (d) Annex 13-E as regards prior users.

3. Each Party shall notify the other if a geographical indication listed in Annex 13-B ceases to be protected in its territory. Following such notification, the Trade Council shall amend Annex 13-B in accordance with point (f) of Article 22.1(6) to end the protection under this Agreement. Only the Party in which the product originates is entitled to request the end of the protection under this Sub-Section of a geographical indication listed in Annex 13-B.

4. MERCOSUR shall notify the European Union if, following the entry into force of this Agreement, it identifies additional prior users that comply with the specific requirements set forth in points (a) to (i) of Article 13.35(8). Following such a notification and provided that the Parties agree that the proposed additional prior users meet the aforementioned requirements, the Trade Council shall amend Annex 13-E pursuant to point (f) of Article 22.1(6) by adding such additional prior users.

5. The Parties shall, either directly or through the Subcommittee on intellectual property rights, remain in contact directly on all matters relating to the implementation and the functioning of this Sub-Section. In particular, a Party may request from the other Party information relating to product specifications and amendments thereto, and contact points for control.

6. A product specification referred to in this Sub-Section shall be the one approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates.

7. The Parties may make publicly available the product specifications or a summary thereof corresponding to the geographical indications of the other Party that are protected pursuant to this Sub-Section, in Portuguese, Spanish or English.

SUB-SECTION 5

PATENTS

ARTICLE 13.40

International treaties

Each Party shall make the best efforts to accede to the Patent Cooperation Treaty, done in Washington on 19 June 1970¹⁷.

¹⁷ For the European Union this provision can be fulfilled through the adherence of its Member States.

SUB-SECTION 6

PLANT VARIETIES

ARTICLE 13.41

International agreements

Each Party shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants done in Paris on 2 December 1961, as revised in Geneva on 10 November 1972, and on 23 October 1978 (1978 UPOV ACT) or on 19 March 1991 (1991 UPOV ACT), and shall cooperate to promote the protection of plant varieties.

SUB-SECTION 7

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 13.42

Scope of protection of trade secrets

1. In fulfilling its obligation under Article 13.1(1) to comply with the TRIPS Agreement, and in particular with Article 39(1) and (2) of the TRIPS Agreement, 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, the following definitions apply:

(a) "trade secret" means information that:

- (i) 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) has commercial value because it is secret; and

- (iii) 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 juridical person lawfully controlling a trade secret.

3. For the purposes of this Sub-Section, a Party shall consider at least the following conducts to be contrary to honest commercial practices:

- (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;
- (b) the use or disclosure of a trade secret whenever carried out without the consent of the trade secret holder by a person who:
 - (i) acquired the trade secret unlawfully;
 - (ii) was in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
 - (iii) was in breach of a contractual or any other duty to limit the use of the trade secret; and

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought to have known, under the circumstances, that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b).

4. A Party shall not be required to consider any of the following conducts to be contrary to honest commercial practices under this Sub-Section:

- (a) independent discovery or creation by a person of the relevant information;
- (b) reverse engineering of a product by a person who is lawfully in possession of that product and who is free from any legally valid duty to limit the acquisition of the relevant information;
- (c) acquisition, use or disclosure of information required or allowed by the relevant Party's law; or
- (d) use by employees of their experience and skills honestly acquired in the normal course of their employment.

5. Nothing in this Sub-Section shall be understood as restricting freedom of expression and information, including media freedom as protected in the jurisdiction of each of the Parties.

ARTICLE 13.43

Civil judicial proceedings and remedies of trade secrets

1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in Article 13.42 or having access to documents which form part of those legal 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 that person has become aware as a result of such participation or access.
2. In the civil judicial proceedings referred to in Article 13.42, each Party shall provide that its judicial authorities have the authority to, at least:
 - (a) order provisional measures, as set out in its laws and regulations, to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;
 - (b) order injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;
 - (c) order the person that knew or ought to have known that he or she was acquiring, using or disclosing the trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages that are appropriate to the actual prejudice suffered as a result of the unlawful acquisition, use or disclosure of the trade secret;

- (d) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in civil proceedings relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices; such specific measures may include, in accordance with the Party's law, restricting access to certain documents in whole or in part, restricting access to hearings and the corresponding records or transcript and making available a non-confidential version of the judicial decision in which the passages containing trade secrets have been removed or redacted; and
- (e) impose sanctions on parties or on other persons that are subject to the court's jurisdiction for violation of judicial orders concerning the protection of a trade secret or alleged trade secret produced in those proceedings.

3. A Party shall not be required to provide for the judicial procedures and remedies referred to in Article 13.42 if the conduct contrary to honest commercial practices is carried out, in accordance with that Party's law, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by law.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 13.44

General obligations

1. Each Party reaffirms its commitments under the TRIPS Agreement and in particular under Part III thereof, and shall ensure the enforcement of intellectual property rights in accordance with its law and within its own legal system and practice.
2. For the purposes of this Section, "intellectual property rights" means, unless otherwise provided, intellectual property rights as defined in Article 13.3(1) with the exception of the rights referred to in Articles 13.42 and 13.43.

3. Procedures¹⁸ adopted, maintained or applied to implement this Section shall be effective, fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays, and shall act as a deterrent to further infringements. Each Party shall take into account the need for proportionality among the infringement, the rights of all parties involved, the interests of third parties, and the applicable measures, remedies and penalties.

4. The Parties shall apply the procedures referred to in paragraph 3 concerning the enforcement of intellectual property rights in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

5. Articles 13.44 to 13.58 do not create any obligation for a Party to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general in accordance with that Party's law, nor does it affect the capacity of the Parties to enforce their law in general.

ARTICLE 13.45

Persons entitled to apply for procedures

Each Party shall recognise at least the following persons as entitled to seek application of the procedures concerning the enforcement of intellectual property rights referred to in this Section and in Part III of the TRIPS Agreement, in accordance with the law where the procedure takes place:

- (a) the holders of intellectual property rights;

¹⁸ For the purposes of this Section, "procedures" includes measures and remedies.

- (b) exclusive licensees provided they are authorised by the right holders; and
- (c) collective intellectual property rights management bodies which are legally and expressly recognised as having a right to represent holders of intellectual property rights.

ARTICLE 13.46

Evidence

1. Each Party shall ensure that the competent judicial authorities have the authority to order, on application by a party which has presented reasonably available evidence to support the party's claims that that party's intellectual property right has been infringed or is about to be infringed, prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information¹⁹.
2. The provisional measures referred to in paragraph 1 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 documents relating thereto.

¹⁹ For the purposes of this Article, "confidential information" may include personal data.

3. Each Party shall take the measures necessary to enable the competent judicial authorities, in cases of trademark counterfeiting or copyright piracy on a commercial scale²⁰, to order, if appropriate, on application by a party, and if necessary to determine the existence and extent of an infringement, the communication of relevant banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

4. Each Party shall ensure that the judicial authorities have the competence to allow measures to preserve evidence to be subject to the lodging by the applicant of adequate security or equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant.

5. If the measures to preserve evidence are revoked, if they lapse due to any act or omission by the applicant, or if it is subsequently found that there was no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon the request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

²⁰ A Party may extend the application of this paragraph to other intellectual property rights.

ARTICLE 13.47

Right of information

1. Each Party shall ensure that, in cases of an infringement of intellectual property rights 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 relevant information on the origin and distribution networks of the infringing goods or services.
2. For the purposes of this Article, the following definitions apply:
 - (a) "any other person" means a person who was:
 - (i) found in possession of the infringing goods on a commercial scale;
 - (ii) found to be using the infringing services on a commercial scale;
 - (iii) found to be providing on a commercial scale services used in infringing activities; or
 - (iv) indicated by the person referred to in points (i) to (iii) as being involved in the production, manufacture or distribution of the goods or the provision of the services.
 - (b) "relevant information" may include information regarding any person involved on a commercial scale in the infringement or alleged infringement and regarding the means of production and distribution networks of the goods or services.

3. This Article applies without prejudice to other statutory provisions 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 involvement or that of their close relatives; or
 - (e) govern the protection of confidentiality of information sources or the processing of personal data.

ARTICLE 13.48

Provisional and precautionary measures

1. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional and precautionary measures, including an interlocutory injunction, against a party or, if appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of an intellectual property right from occurring and, in particular, to prevent infringing goods from entering into the channels of commerce.

2. An interlocutory injunction may also be issued to 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. Each Party shall ensure that, in the case of an alleged infringement committed on a commercial scale, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities are able to order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets. To that end, each Party shall ensure that the competent authorities are able to order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

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

ARTICLE 13.49

Remedies

1. Each Party shall ensure that the competent judicial authorities are able to order, on the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, without compensation of any sort, the destruction, or at least the definitive removal from the channels of commerce, of goods that they have found to infringe an intellectual property right. Such goods may be used for the public interest. The judicial authorities shall also have the authority to order that materials and implements predominantly used in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements. In considering such requests, the competent judicial authorities shall take into consideration the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties.

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

ARTICLE 13.50

Injunctions

Each Party shall ensure that, if a judicial decision finds an infringement of an intellectual property right, the competent judicial authorities are able to issue against the infringer or, if appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, an injunction aimed at prohibiting the continuation of the infringement.

ARTICLE 13.51

Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and upon the request of the person liable to be subject to the measures provided for in Article 13.49 or 13.50, may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 13.49 or 13.50, if it is found that the former acted unintentionally and without negligence, or if the execution of the measures in question would cause them disproportionate harm or if pecuniary compensation to the injured party appears reasonably satisfactory²¹.

²¹ In deciding what is "reasonably satisfactory", the judge may take into consideration the public interest.

ARTICLE 13.52

Damages

1. Each Party shall ensure that the judicial authorities have the authority, upon the request of the injured party, to order an infringer who knowingly, or with reasonable grounds to know, engaged in an activity infringing intellectual property rights to pay the right holder damages appropriate to compensate for the actual prejudice suffered as a result of the infringement of the intellectual property right. In setting the damages, the competent judicial authorities:
 - (a) shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits²² made by the infringer and, if applicable, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or
 - (b) as an alternative to point (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

²² "Unfair profits" are those derived from the infringement, in accordance with a Party's law.

ARTICLE 13.53

Legal costs

Each Party shall provide that its judicial authorities, if appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning the enforcement of intellectual property rights, that the prevailing party be awarded payment by the losing party of legal costs and other expenses, as provided for under that Party's law.

ARTICLE 13.54

Publication of judicial decisions

Each Party shall ensure that its judicial authorities are able to order the publication of the decision in cases of infringement of an intellectual property right, unless this would not be proportionate to the seriousness of the infringement.

ARTICLE 13.55

Presumption of authorship or ownership

Each Party shall, at least in provisional measures requested in civil proceedings involving copyright and related rights, provide for a presumption that, in the absence of proof to the contrary, the person or entity whose name is indicated as the author or related right holder of the work or subject matter in the usual manner is the designated right holder in such work or subject matter.

ARTICLE 13.56

Public awareness

The Parties shall take the necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property rights as well as on the enforcement thereof.

SUB-SECTION 2

BORDER ENFORCEMENT

ARTICLE 13.57

Consistency with GATT and the TRIPS Agreement

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

ARTICLE 13.58

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 requesting customs authorities to suspend the release or detain goods suspected of, at least, trademark counterfeiting, copyright and related rights piracy on a commercial scale or infringing of geographical indications (hereinafter referred to as "suspect goods").
2. The Parties shall not be obliged to apply the procedures in this Sub-Section to goods in transit.
3. Each Party shall encourage the use of electronic systems for the management by customs authorities of the applications granted or recorded.
4. Each Party shall ensure that customs authorities inform the applicant within a reasonable period of time whether they have granted or recorded the application.
5. Each Party shall provide for such application or recordation to apply to multiple shipments when so allowed in accordance with the provisions of the Party's law.
6. Each Party may provide that its customs authorities have the authority, with respect to goods under customs control, to suspend the release of or detain suspect goods on their own initiative.
7. Each Party shall ensure that customs authorities are able to use risk analysis to identify suspect goods.

8. Each Party may have in place administrative or judicial procedures, in accordance with the Party's law, allowing for the destruction of suspect goods, if the persons concerned accept or do not oppose to the destruction thereof. If such goods are not destroyed, each Party shall ensure that they are disposed of outside commercial channels in such a manner as to avoid any harm to the right holder.

9. The Parties shall not be obliged to apply this Article to imports 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.

10. The Parties shall ensure that the customs authorities of each Party maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of the intellectual property rights referred to in paragraph 1.

11. The Parties shall cooperate with respect to international trade in suspect goods and, in particular, to share information on such trade.

12. Without prejudice to other forms of cooperation, Annex 4-A applies to breaches of legislation on intellectual property rights the enforcement of which falls within the competence of the customs authorities in accordance with this Article.

SECTION D

FINAL PROVISIONS

ARTICLE 13.59

Subcommittee on intellectual property rights

1. The Subcommittee on intellectual property rights, established pursuant to Article 22.3(4), shall have the following functions, in addition to those listed in Articles 13.39 and 22.3:

(a) to exchange information:

- (i) on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement; and
- (ii) related to public domain in the territories of the Parties; and

(b) to exchange experiences on:

- (i) the legislative progress;
- (ii) the enforcement of intellectual property rights; and
- (iii) the enforcement at central and sub-central levels by customs, police, administrative and judiciary bodies.

ARTICLE 13.60

Cooperation

1. With a view to facilitating the implementation of this Chapter, the Parties shall cooperate:

- (a) within the Subcommittee on intellectual property rights;
- (b) in international fora;
- (c) via various agencies; or
- (d) as otherwise deemed appropriate.

2. The areas of cooperation include the following activities:

- (a) coordination to prevent exports of counterfeit goods, including with other countries;
- (b) technical assistance, capacity-building, exchange and training of personnel;
- (c) protection and enforcement of intellectual property rights and the dissemination of information in this regard in, *inter alia*, business circles and civil society;
- (d) public awareness of consumers and right holders and enhancement of institutional cooperation, particularly between intellectual property offices;

- (e) actively promoting awareness and education of the general public on policies concerning intellectual property rights;
- (f) engaging with SMEs, including at SME-focused events or gatherings, regarding the use, protection and enforcement of intellectual property rights;
- (g) the application of the CBD and related instruments and the domestic frameworks on access to genetic resources and associated traditional knowledge, innovations and practices; and
- (h) facilitation of voluntary stakeholder initiatives to reduce intellectual property rights infringement, including over the internet and in other marketplaces.