

CHAPTER 18

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS

ARTICLE 18.1

Objectives

The objectives of this Chapter are to:

- (a) promote the creation, production, dissemination and commercialisation of innovative and creative goods and services in and between the Parties, contributing to a more sustainable and inclusive economy for the Parties;
- (b) promote, support and govern trade between the Parties as well as reduce distortions and impediments to such trade; and
- (c) ensure an adequate and effective level of protection and enforcement of intellectual property rights.

ARTICLE 18.2

Scope

1. This Chapter complements and further specifies the rights and obligations of each Party under the TRIPS Agreement and other international agreements in the field of intellectual property to which they are parties.
2. Each Party shall give effect to this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.
3. This Chapter does not preclude a Party from providing more extensive protection for, or enforcement of, intellectual property rights than is required by this Chapter, provided that such protection and enforcement does not contravene this Chapter.

ARTICLE 18.3

Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "intellectual property rights" means all categories of intellectual property that are covered by Articles 18.8 (Authors) to 18.45 (Protection of plant variety rights) of this Chapter and Sections 1 to 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10^{bis} of the Paris Convention;

- (b) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO to which a Party is a contracting party;
- (c) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Stockholm on 14 July 1967;
- (d) "WIPO" means the World Intellectual Property Organization; and
- (e) "WPPT" means the WIPO Performances and Phonograms Treaty done at Geneva on 20 December 1996.

ARTICLE 18.4

International agreements

1. Each Party shall comply with its commitments under the following international agreements:
 - (a) TRIPS Agreement;
 - (b) WIPO Copyright Treaty adopted in Geneva on 20 December 1996;

- (c) WPPT;
- (d) Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled, done in Marrakesh on 27 June 2013;
and
- (e) Trademark Law Treaty, done at Geneva on 27 October 1994.

2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:

- (a) Beijing Treaty on Audiovisual Performances, done at Beijing on 24 June 2012;
- (b) Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006; and
- (c) The Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.

3. Each Party shall ensure that the procedures provided under the following international agreements are available in its territory:

- (a) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989, as last amended on 12 November 2007; and
- (b) Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 3 October 2001.

ARTICLE 18.5

Exhaustion

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under the law of that Party.

ARTICLE 18.6

National treatment

1. In respect of all categories of intellectual property covered by this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than that which it accords to its own nationals with regard to the protection¹ of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as revised at Paris on 24 July 1971, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961, WPPT, or the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington, on 26 May, 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Agreement.

¹ For the purposes of this paragraph, the term "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Chapter, including the adequate legal protection against the circumvention of effective technological measures referred to in Article 18.17 (Protection of technological measures) and measures concerning rights-management information referred to in Article 18.18 (Obligations concerning rights-management information).

2. A Party may avail itself of the exceptions permitted under paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

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

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

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

ARTICLE 18.7

TRIPS Agreement and public health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted at Doha on 14 November 2001 by the Ministerial Conference of the WTO. This Chapter shall be interpreted and implemented consistently with that Declaration.

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

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 18.8

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 other transfer of ownership of the original of their works or of copies thereof;
- (c) any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and
- (d) the commercial rental to the public of originals or copies of their works in respect of at least phonograms, computer programmes² and cinematographic works.

ARTICLE 18.9

Performers

Each Party shall provide performers with the exclusive right to authorise or prohibit:

- (a) the fixation³ 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;

² A Party may exclude computer programmes where the computer programme itself is not the essential object of the rental.

³ The term "fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

- (c) any form of distribution to the public, by sale or other transfer of ownership, of the fixations of their performances;
- (d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation; and
- (f) the commercial rental to the public of the fixation of their performances.

ARTICLE 18.10

Producers of phonograms

Each Party shall provide producers of phonograms 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) any form of the distribution to the public, by sale or other transfer of ownership, of their phonograms;
- (c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and
- (d) the commercial rental of their phonograms to the public.

ARTICLE 18.11

Broadcasting organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

- (a) the fixation of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;

- (c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite; and
- (e) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

ARTICLE 18.12

Broadcasting and communication to the public of phonograms published for commercial purposes⁴

1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms⁵, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or communication to the public.⁶

2. Each Party shall ensure that the single equitable remuneration is shared between the relevant performers and producers of phonograms. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

⁴ A Party may comply with this Article by granting exclusive rights to performers and producers of phonograms for broadcasting and communication to the public.

⁵ Each Party may grant more extensive rights to performers and producers of phonograms, such as exclusive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes.

⁶ Each Party may decide that the term "communication to the public" does not include the making available to the public of a phonogram, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

ARTICLE 18.13

Term of protection⁷

1. The rights of an author of a work shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship, the term of protection as specified 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 70 years after the work is lawfully made available to the public. However, if the pseudonym adopted by the author leaves no doubt as to the author's identity, or if the author discloses it during the period referred to in the first sentence of this paragraph, the term of protection applicable shall be that laid down in paragraph 1.
4. If a Party provides that the term of protection of a cinematographic or audio-visual work is calculated on a basis other than the life of a natural person, such term of protection shall be no less than 70 years from the date of the first lawful publication or the first lawful communication to the public, or, failing such lawful publication or lawful communication to the public within 70 years from the making of the work, 70 years from the making of the work.

⁷ If on the date of entry into force of this Agreement a Party's laws and regulations do not provide for the terms of protection set out in this Article, this Article shall apply only as of the date such laws and regulations enter into effect in that Party and in any case no later than four years after the date of entry into force of this Agreement. That Party shall notify the other Party the date upon which such laws and regulations entered into effect, if that date is earlier than four years after the date of entry into force of this Agreement.

5. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air, including by cable or satellite.

6. The rights of performers shall expire 50 years after the date of the fixation of the performance. However, if a fixation of the performance in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire 70 years after the date of the first such publication or the first such communication to the public, whichever is the earlier.

7. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram has been lawfully published or lawfully communicated to the public within this period, those rights shall expire 70 years from the date of the first such publication or the first such communication to the public. Each Party may adopt effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

8. The terms of protection laid down in this Article shall be calculated from the first day of January of the year following the event that gives rise to them.

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

ARTICLE 18.14

Resale right⁸

1. Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. The resale right referred to in paragraph 1 shall apply to all acts of resale involving art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art as sellers, buyers or intermediaries.
3. Each Party may provide that the resale right referred to in paragraph 1 shall not apply to acts of resale if the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.
4. The procedure for collection of the remuneration and its amount shall be a matter for determination by the law of each Party.

⁸ If on the date of entry into force of this Agreement a Party's laws and regulations do not provide for the protection set out in this Article, this Article shall apply only as of the date such laws and regulations enter into effect in that Party but in any case no later than two years after the date of entry into force of this Agreement. That Party shall notify the other Party the date upon which such laws and regulations entered into effect, if that date is earlier than two years after the date of entry into force of this Agreement.

ARTICLE 18.15

Collective management of rights

1. The Parties recognise the importance of, and shall endeavour to promote, cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in their respective territories and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.

2. The Parties recognise the importance of, and shall endeavour to promote, transparency of collective management organisations, in particular regarding the rights revenue they collect, the deductions they apply to the rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.

3. Where a collective management organisation established in the territory of one Party represents another collective management organisation established in the territory of the other Party by way of a representation agreement, the Parties recognise that it is important that the representing collective management organisation:

- (a) does not discriminate against right holders of the represented collective management organisation;
- (b) accurately, regularly and diligently pays amounts owed to the represented collective management organisation; and

- (c) provides the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions from that amount of rights revenue.

ARTICLE 18.16

Limitations and exceptions

Each Party shall provide for limitations or exceptions to the rights set out in Articles 18.8 (Authors) to 18.12 (Broadcasting and communication to the public of phonograms published for commercial purposes) only in 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 holder.

ARTICLE 18.17

Protection of technological measures⁹

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they are pursuing such objective.

⁹ If on the date of entry into force of this Agreement a Party's laws and regulations do not provide for the protection set out in this Article, this Article shall apply only as of the date such laws and regulations enter into effect in that Party but in any case no later than four years after the date of entry into force of this Agreement. That Party shall notify the other Party the date upon which such laws and regulations entered into effect, if that date is earlier than four years after the date of entry into force of this Agreement.

2. Each Party shall provide adequate legal protection against:

- (a) a person manufacturing, importing, distributing, selling, renting or advertising for sale or rental any device, product or component that:
 - (i) has only a limited purpose or use other than to circumvent any technological measure; or
 - (ii) is primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any technological measure; and
- (b) a person providing any service that is promoted, advertised or marketed for the purpose of enabling or assisting in the circumvention of any technological measure.

3. For the purposes of this Sub-Section, the term "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other protected subject matter, which are not authorised by the right holder of any copyright or related rights covered by this Sub-Section.

4. A Party may adopt or maintain appropriate measures, as necessary, to ensure that the adequate legal protection pursuant to paragraphs 1 and 2 of this Article does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in accordance with Article 18.16 (Limitations and exceptions).

ARTICLE 18.18

Obligations concerning rights-management information

1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

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

if such person knows, or has reasonable grounds to know, that by so doing they are inducing, enabling, facilitating or concealing an infringement of any copyright or related rights as provided by the law of a Party.

2. For the purposes of this Article, the term "rights-management information" means any information provided by right holders that identifies the work or other subject matter referred to in this Article, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

3. Paragraph 2 applies if any of the items of information as referred to in paragraph 2 is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter referred to in this Article.

SUB-SECTION 2

TRADEMARKS

ARTICLE 18.19

Trademark classification

Each Party shall maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as amended on 28 September 1979.

ARTICLE 18.20

Signs of a trademark

A trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

- (a) distinguishing the goods or services of one undertaking from those of other undertakings; and

- (b) being represented on the respective trademark register of each Party in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

ARTICLE 18.21

Rights conferred by a trademark

1. Each Party shall provide that a registered trademark confers on the proprietor 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 that is identical with the registered trademark in relation to goods or services that are identical with those for which the trademark is registered; and
- (b) any sign where, because of its identity with, or similarity to, the registered trademark and the identity or similarity of the goods or services covered by that registered trademark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the registered trademark.

2. The proprietor of a registered trademark shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Party where the trademark is registered without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorisation a trademark that is identical to the trademark registered in respect of such goods, or that cannot be distinguished in its essential aspects from that registered trademark.¹⁰

3. The entitlement of the proprietor of a registered trademark referred to in paragraph 2 may lapse if, during the proceedings to determine whether the registered trademark has been infringed, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

ARTICLE 18.22

Registration procedure

1. Each Party shall provide for a system for the registration of trademarks in which each final negative decision taken by the relevant trademark administration, including partial refusal of registration, shall be communicated in writing to the relevant party, duly reasoned and subject to appeal.

¹⁰ A Party may take additional appropriate measures with a view to ensuring the smooth transit of generic medicines.

2. Each Party shall provide for the possibility for third parties to oppose trademark applications or, where appropriate, trademark registrations. Such opposition proceedings shall be adversarial.

3. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.

ARTICLE 18.23

Well-known trademarks

For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6^{bis} of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

ARTICLE 18.24

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 geographical indications, and may provide other limited exceptions, provided that such limited exceptions take account of the legitimate interests of the proprietor of the trademark and of third parties.

2. The trademark shall not entitle the proprietor of the trademark to prohibit a third party from using, in the course of trade:

- (a) the name or address of the third party;
- (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, where it is necessary to indicate the intended purpose of a good or service, in particular as accessories or spare parts,

provided that the third party uses them in accordance with honest practices in industrial or commercial matters.

3. The trademark shall not entitle the proprietor of the trademark to prohibit a third party from using, in the course of trade, an earlier right that only applies in a particular locality if that right is recognised by the law of the Party in question and is used within the limits of the territory in which it is recognised.

ARTICLE 18.25

Grounds for revocation

1. Each Party shall provide that a trademark shall be liable to revocation if, within a continuous period of time determined by the law of each Party¹¹, the trademark has not been put to genuine use in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. However, no person may claim that the proprietor's rights in a trademark should be revoked where, during the interval between expiry of the continuous period of time referred to in the first sentence and the filing of the application for revocation, genuine use of the trademark has been started or resumed. The commencement or resumption of use within a period of time determined by the law of each Party¹² preceding the filing of the application for revocation, which began at the earliest on expiry of the continuous period of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.

2. A trademark shall also be liable to revocation if, after the date on which it was registered:

- (a) as a consequence of acts or inactivity of the proprietor of the trademark, the trademark has become the common name in the trade for a good or service in respect of which it is registered; or

¹¹ For the purposes of this sentence, the period of time determined by the law of each Party shall be at least three years.

¹² For the purposes of this sentence, the period of time determined by the law of each Party shall be at least one month.

- (b) as a consequence of the use made of the trademark by the proprietor of the trademark or with the proprietor's consent in respect of the goods or services for which it is registered, the trademark is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

ARTICLE 18.26

Bad-faith applications

A trademark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. Each Party may also provide that such a trademark shall not be registered.

SUB-SECTION 3

DESIGNS

ARTICLE 18.27

Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new or original. This protection shall be provided by registration and shall confer an exclusive right upon holders of such designs in accordance with this Sub-Section. For the purposes of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the registered design, or using articles bearing or embodying the protected design if such acts are undertaken for commercial purposes.¹³

¹³ A Party may satisfy Article 18.27 (Protection of registered designs), as regards exporting and stocking, by providing the holder of the registered design the right to prevent third parties from offering for sale or hire, or selling or hiring any article bearing or embodying that registered design in a way that gives rise to the exporting or stocking of that article.

3. A Party may provide that a design applied to or incorporated in a product that constitutes a component part of a complex product shall only be considered to be new or original:

- (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of that complex product; and
- (b) to the extent that the visible features of the component part referred to in point (a) fulfil in themselves the requirements as to novelty and originality.

4. For the purposes of point (a) of paragraph 3, the term "normal use" means use by the end user, excluding maintenance, servicing or repair work.

ARTICLE 18.28

Duration of protection

Each Party shall ensure that the right holder of a registered design may have the term of protection renewed for one or more periods of five years each. Each Party shall ensure that the duration of protection available for registered designs amounts to a total term of at least 15 years from the date of filing an application for registration.

ARTICLE 18.29

Protection conferred to unregistered designs

1. Each Party shall confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory. Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product.¹⁴
2. The duration of protection available for the unregistered design shall amount to at least three years from the date on which the design was first made available to the public in the territory of the Party.

ARTICLE 18.30

Exceptions and exclusions

1. Each Party may provide limited exceptions to the protection of designs, including unregistered 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.

¹⁴ A Party may satisfy Article 18.29 (Protection conferred to unregistered designs), as regards exporting, by providing the holder of the unregistered design the right to prevent third parties from selling, putting on the market or importing the product bearing or embodying the unregistered design in a way that gives rise to the exporting of such product.

2. Design protection shall not extend to designs solely dictated by its technical or functional considerations. A design shall not subsist in features of appearance of a product that must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

3. By way of derogation from paragraph 2 of this Article, a design shall, in accordance with the conditions set out in Article 18.27(1) (Protection of registered designs), subsist in a design which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

ARTICLE 18.31

Relationship to copyright

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

SUB-SECTION 4

GEOGRAPHICAL INDICATIONS

ARTICLE 18.32

Scope, procedures and definitions

1. This Sub-Section applies to the recognition and protection of geographical indications for wine, spirits and foodstuffs which originate in the Parties.
2. For the purposes of this Sub-Section, the following definitions apply:
 - (a) "geographical indication" means an indication that identifies a good as originating in a Party, or a region or locality in that Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
 - (b) "product class" means a product class specified in Annex 18-A (Product classes); and
 - (c) "product specification" means, as regards the relevant good for a geographical indication, the approved requirements for the use of that geographical indication in marketing of that good.

3. Following the completion of an opposition procedure and an examination of the geographical indications, New Zealand shall protect the geographical indications of the Union listed in Section A (List of geographical indications – European Union) of Annex 18-B (Lists of geographical indications) in accordance with, at least, the level of protection set out in this Sub-Section.

4. Following the completion of an opposition procedure and an examination of the geographical indications, the Union shall protect the geographical indications of New Zealand listed in Section B (List of geographical indications – New Zealand) of Annex 18-B (Lists of geographical indications) in accordance with, at least, the level of protection set out in this Sub-Section.

ARTICLE 18.33

Amendment of the list of geographical indications

1. The list of product classes in Annex 18-A (Product classes) and the list of geographical indications in Annex 18-B (Lists of geographical indications) may be amended by decision of the Trade Committee, including by adding geographical indications, updating the list of product classes or removing geographical indications which have ceased to be protected in their place of origin.

2. Additions to Annex 18-B (Lists of geographical indications) shall not exceed 30 geographical indications of each Party every three years after the date of entry into force of this Agreement. New geographical indications shall be added after the opposition procedure is completed in accordance with paragraph 3 of this Article and after new geographical indications are examined to the satisfaction of both Parties.

3. Each Party shall provide that objections to a request for protection of a geographical indication under the opposition procedure referred to in Article 18.32(3) and (4) (Scope, procedures and definitions) may be made, and that any such request for protection may be refused or otherwise not afforded. The grounds of objection to a request for protection of a geographical indication shall be the following:

- (a) the geographical indication is identical or confusingly similar to a trademark that has been registered, or applied to be registered, in good faith in the Party in respect of the same or a similar good, or to a trademark in respect of which rights have been acquired in the Party through use in good faith in respect of the same or a similar good;
- (b) the geographical indication is identical with or similar to a trademark in relation to any good that is not similar to the good in respect of which the trademark is registered where the trademark is well known in the Party and the use of the geographical indication would indicate a connection between the good and the owner of the trademark and the interests of the trademark owner are likely to be damaged by such use;
- (c) the geographical indication is a term customary in common language as the common name for the relevant good in the Party;
- (d) the geographical indication is a term that is used in the Party as the name of a plant variety or an animal breed and as a result is likely to mislead consumers as to the true origin of the good;

- (e) the geographical indication is a homonymous or partially homonymous geographical indication; and
- (f) use or registration of the geographical indication in the Party would be likely to be offensive.

4. For the purposes of this Sub-Section, in determining whether a term is customary in common language as the common name for the relevant good in the Party, the Party may take into account how consumers understand the term in that Party. Factors relevant to such consumer understanding may include evidence as to whether the term is used to refer to the same type of good in question, as indicated by relevant sources, and how the good referenced by the term is marketed and used in trade in that Party.

5. In assessing the objections for protection submitted by a person against any of the grounds listed in paragraph 3, a Party shall base its assessment only on the situation existing in that Party.

ARTICLE 18.34

Protection of geographical indications

1. Each Party shall, in respect of geographical indications of the other Party listed in Annex 18-B (Lists of geographical indications), provide the legal means for interested parties to prevent in its territory:

- (a) the commercial use of a geographical indication identifying a good for a like good¹⁵ not meeting the applicable product specifications of the geographical indication even if:
 - (i) the true origin of the good is indicated;
 - (ii) the geographical indication is used in translation¹⁶ or transliteration¹⁷; or
 - (iii) the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation", or the like;
- (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 the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and

¹⁵ For the purposes of this Sub-Section, the term "like good" means a good that falls within the same product class as listed in Annex 18-A (Product classes).

¹⁶ For greater certainty, it is understood that this is to be assessed on a case-by-case basis. This provision does not apply when evidence is provided that there is no link between the geographical indication and the translated term.

¹⁷ For the purposes of this Sub-Section, the term "transliteration" means the conversion of characters following the phonetics of the original language or languages of the relevant geographical indication.

(c) any other use of a geographical indication that constitutes an act of unfair competition within the meaning of Article 10^{bis} of the Paris Convention, which may include commercial use of a geographical indication in a manner that exploits the reputation of that geographical indication, including when the good is used as an ingredient.

2. This Sub-Section does not apply in respect of a geographical indication of a Party listed in Annex 18-B (Lists of geographical indications) that is no longer protected pursuant to the laws and regulations of the other Party.

3. If a geographical indication of a Party listed in Annex 18-B (Lists of geographical indications) ceases to be protected in the territory of the Party of origin, the Party of origin shall promptly notify the other Party and request cancellation of protection for such geographical indication.

4. Nothing in this Sub-Section shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where the name is used in such a manner as to mislead the public.

5. Nothing in this Sub-Section shall require a Party to apply the provisions of this Sub-Section in respect of a geographical indication of the other Party with respect to a good for which the relevant indication is identical or similar to:

- (a) the customary name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good; or
- (b) a term customary in common language as the common name for such a good in that Party.

6. Nothing in this Sub-Section shall require a Party to apply the provisions of this Sub-Section in respect of any individual component contained in a multicomponent geographical indication of the other Party with respect to a good for which the individual component is identical or similar to:

- (a) the customary name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good; or
- (b) a term customary in common language as the common name for such a good in that Party.

7. Nothing in this Sub-Section shall require a Party to apply the provisions of this Sub-Section in respect of any word, or translation or transliteration of any word, contained in a geographical indication of the other Party where that word, or that translation or transliteration is a common English word such as "mountain", "alps" or "river".

ARTICLE 18.35

Date of protection

1. Each Party shall provide that geographical indications listed in Annex 18-B (Lists of geographical indications) and referred to in Article 18.32 (Scope, procedures and definitions) are protected as of the date of entry into force of this Agreement in accordance with Article 18.34 (Protection of geographical indications).

2. For geographical indications added to Annex 18-B (Lists of geographical indications) after the date of entry into force of this Agreement, each Party shall provide that such geographical indications are protected in accordance with Article 18.34 (Protection of geographical indications) from the date on which the names were published for the purposes of the opposition procedure referred to in Article 18.33(2) (Amendment of the list of geographical indications).

ARTICLE 18.36

Right of use of geographical indications

1. A geographical indication protected under this Sub-Section may be used by any operator marketing a good that conforms to the corresponding product specification.
2. Paragraph 1 does not restrict a Party's ability to regulate the production or marketing of goods to which a geographical indication relates in accordance with the law of that Party.

ARTICLE 18.37

Relationship to trademarks

1. The registration of a trademark that contains or consists of a geographical indication of the other Party listed in Annex 18-B (Lists of geographical indications) shall be refused or invalidated *ex officio*, if the Party's laws and regulations so permit or at the request of an interested party, with respect to a good that falls within the product class specified in Annex 18-A (Product classes) for that geographical indication and that does not originate in the place of origin specified in Annex 18-B (Lists of geographical indications) for that geographical indication.
2. If a trademark has been applied for or registered in good faith, or if rights to a trademark have been acquired through use in good faith, in a Party before the date of protection of that geographical indication in accordance with Article 18.35 (Date of protection), measures adopted to implement this Sub-Section in that Party shall not prejudice the eligibility for or the validity of the registration of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to, a geographical indication. Such trademark may continue to be used and renewed for that good notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the Party's law on trademarks.
3. The law of a Party may provide that any request made in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party.

ARTICLE 18.38

Enforcement of protection

Each Party shall provide that geographical indications listed in Annex 18-B (Lists of geographical indications) are enforced *ex officio* or at the request of an interested party, in accordance with its law by appropriate administrative and judicial steps.

ARTICLE 18.39

General rules

1. In the case of homonymous geographical indications, for which protection is requested in accordance with Article 18.33 (Amendment of the list of geographical indications), for goods falling within the same product class, the Trade Committee shall adopt a decision to determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
2. A Party that, in the context of negotiations of an international agreement with a third country, considers the possible protection of a geographical indication identifying a good originating in that third country shall inform the other Party and give that Party the opportunity to comment before the geographical indication becomes protected, if:
 - (a) the geographical indication under consideration in the negotiations with the third country is homonymous with a geographical indication of the other Party listed in Annex 18-B (Lists of geographical indications); and

(b) the concerned good falls within the product class specified in Annex 18-A (Product classes) for the homonymous geographical indication of the other Party.

3. A product specification of a geographical indication listed in Annex 18-B (Lists of geographical indications) shall be that approved, including any amendments thereto that were also approved, by the relevant authorities of the Party in the territory from which the good originates.

4. The protection of a geographical indication of a Party listed in Annex 18-B (Lists of geographical indications) may only be cancelled by the Party in which the good originates.

5. Goods may be marketed and sold until stocks are exhausted, if they have been legally described and presented in a manner prohibited by this Sub-Section on the date:

(a) of entry into force of this Agreement;

(b) of the adoption by decision of the Trade Committee of an amendment to the list of geographical indications in accordance with Article 18.33 (Amendment of the list of geographical indications); or

(c) on which a relevant transitional period set out in Annex 18-B (Lists of geographical indications) ends.

ARTICLE 18.40

Systems of protection of geographical indications

1. Each Party shall establish or maintain a system for the registration and protection of geographical indications in its territory.
2. The system referred to in paragraph 1 shall contain at least the following elements:
 - (a) official means to make available to the public the list of registered geographical indications;
 - (b) an administrative process to verify that a geographical indication to be registered identifies a good as originating in the territory of a Party, or a region or locality in that Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
 - (c) an opposition procedure that allows the legitimate interests of third parties to be taken into account; and
 - (d) a procedure for the cancellation of the protection of a geographical indication that takes into account the legitimate interests of third parties and those of the users of the registered geographical indications in question.

SUB-SECTION 5

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 18.41

Scope of protection of trade secrets and definitions

1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.
2. For the purposes of this Sub-Section, 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 person lawfully controlling a trade secret.

3. For the purposes of this Sub-Section, at least the following conduct shall be considered to be contrary to honest commercial practices:

- (a) the acquisition of a trade secret without the consent of the trade secret holder, if obtained by unauthorised access to, or by appropriation of or copying of any documents, objects, materials, substances or electronic files that are lawfully under the control of the trade secret holder and that contain the trade secret or from which the trade secret can be deduced;
- (b) the use or disclosure of a trade secret whenever carried out without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
 - (i) having acquired the trade secret in a manner referred to in point (a);
 - (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
 - (iii) being in breach of a contractual or any other duty to limit the use of the trade secret; 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, under the circumstances, to have known 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. Nothing in this Sub-Section shall be understood as requiring either Party to consider any of the following conduct as contrary to honest commercial practices:

- (a) independent discovery or creation;
- (b) reverse engineering of a product by a person who is lawfully in possession of it 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 law of each Party; and
- (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 the freedom of the media as protected in each Party.

ARTICLE 18.42

Civil judicial procedures and remedies as regards trade secrets

1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in Article 18.41(1) (Scope of protection of trade secrets and definitions) or who has access to documents that form part of those civil judicial proceedings, is not permitted to use or disclose any trade secret or alleged trade secret that the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.

2. In the civil judicial proceedings referred to in Article 18.41(1) (Scope of protection of trade secrets and definitions), each Party shall provide that its judicial authorities have the authority at least to:

- (a) order provisional measures, in accordance with the law of a Party, 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 persons that knew or ought to have known that they were acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the injury suffered as a result of such 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 law of a Party, the possibility of restricting access to certain documents in whole or in part, restricting access to hearings and their 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 any other persons participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.

3. Each Party shall ensure that its judicial authorities do not have to apply the civil judicial procedures and remedies referred to in Article 18.41(1) (Scope of protection of trade secrets and definitions) when the conduct contrary to honest commercial practices is carried out in accordance with the law of a Party, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by the law of a Party.

ARTICLE 18.43

Protection of data submitted to obtain an authorisation to put a pharmaceutical product¹⁸ on the market

1. Each Party shall protect commercially confidential information submitted to obtain an authorisation to place pharmaceutical products on the market (hereinafter referred to as "marketing authorisation") against disclosure to third parties, unless steps are taken to ensure that the data are protected against unfair commercial use or except where the disclosure is necessary for an overriding public interest.

¹⁸ For the purposes of this Article, the term "pharmaceutical product" shall be defined by the law of each Party. In the case of the Union, the term "pharmaceutical product" means a "medicinal product".

2. Each Party shall ensure that for a period of at least five years from the date of a first marketing authorisation in the Party concerned (hereinafter referred to as "first marketing authorisation") and in accordance with any conditions set out in its law, the authority responsible for the granting of a marketing authorisation does not accept any subsequent application for a marketing authorisation that relies on the results of pre-clinical tests or clinical trials submitted in the application for the first marketing authorisation without the explicit consent of the holder of the first marketing authorisation, unless international agreements recognised by both Parties provide otherwise.

ARTICLE 18.44

Protection of data submitted to obtain marketing authorisation for agricultural chemical products¹⁹

1. Each Party shall recognise a temporary right of the owner of a test or study report submitted for the first time to obtain a marketing authorisation for an agricultural chemical product. During the period in which that temporary right is held, the test or study report shall not be used for the benefit of any other person who seeks to obtain a marketing authorisation for an agricultural chemical product, unless the explicit consent of the first owner is proved. For the purposes of this Article, the term "temporary right" means "data protection".

¹⁹ For the purposes of this Article, the term "agricultural chemical product" shall be defined by the law of each Party. In the case of the Union, the term "agricultural chemical product" means a "plant protection product".

2. The test or study report referred to in paragraph 1 should fulfil the following conditions:
 - (a) be necessary for the authorisation or for an amendment to an authorisation in order to allow additional uses; and
 - (b) be recognised as compliant with the principles of good laboratory practice or of good experimental practice, in accordance with the law of each Party.
3. The period of data protection shall be at least 10 years from the grant of the first authorisation by the relevant authority in the territory of the Party.
4. Each Party may establish rules to avoid duplicative testing on vertebrate animals.

SUB-SECTION 6

PLANT VARIETIES

ARTICLE 18.45

Protection of plant variety rights²⁰

Each Party shall have a system²¹ in place for the protection of plant variety rights that gives effect to the International Convention for the Protection of New Varieties of Plants (UPOV), as revised at Geneva on 19 March 1991.

²⁰ For greater certainty, the Parties understand that the measures referred to in Article 25.6(1) (Tiriti o Waitangi / Treaty of Waitangi) may include measures in respect of matters covered by this Sub-Section that New Zealand deems necessary to protect Māori rights, interests, duties and responsibilities in fulfilment of its obligations under te Tiriti o Waitangi / the Treaty of Waitangi, provided that the conditions of Article 25.6 (Tiriti o Waitangi / Treaty of Waitangi) are fulfilled.

²¹ For greater certainty, for the purposes of this Sub-Section, the system may be a *sui generis* system.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 18.46

General obligations

1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular under its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.²²
2. Those measures, procedures and remedies shall:
 - (a) be fair and equitable;

²² For the purposes of this Section, the term "intellectual property rights" does not include rights covered by Sub-Section 5 (Protection of undisclosed information) of Section B (Standards concerning intellectual property rights).

- (b) not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays;
- (c) be effective, proportionate and dissuasive; and
- (d) be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

ARTICLE 18.47

Persons entitled to apply for the application of the measures,
procedures and remedies

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section:

- (a) the holders of intellectual property rights in accordance with the law of the Party;
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of the Party;
- (c) intellectual property collective rights-management bodies that are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the law of the Party; and

- (d) professional defence bodies that are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the law of the Party.

ARTICLE 18.48

Measures for preserving evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support their claims that their intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to appropriate safeguards and the protection of confidential information.
2. 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 materials and implements used in the production or distribution of such goods and the documents relating thereto.

ARTICLE 18.49

Evidence

1. Each Party shall take measures necessary to enable its competent judicial authorities to order, on application by a party that has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence that lies in the control of the opposing party, that such evidence be produced by the opposing party, subject to the protection of confidential information.

2. Each Party shall also take measures necessary to enable its competent judicial authorities to order, where appropriate, in cases of infringement of an intellectual property right committed on a commercial scale, under the same conditions as in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

ARTICLE 18.50

Right of information

1. Each Party shall ensure that, in the context of civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, its competent judicial authorities may order the infringer or alleged infringer or any other person to provide relevant information in that person's control or possession on the origin and distribution networks of the goods or services that infringe an intellectual property right.

2. For the purposes of this Article, the term "any other person" means a person who, at least:

- (a) was found in possession of the infringing goods on a commercial scale;
- (b) was found to be using the infringing services on a commercial scale;
- (c) was found to be providing on a commercial scale services used in infringing activities;
or
- (d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or provision of the services.

3. The information referred to in paragraph 1 shall, as appropriate, comprise:

- (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; and
- (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

4. Paragraphs 1 and 2 shall apply without prejudice to other law of a Party that:

- (a) grants the holder of intellectual property rights to receive fuller information;

- (b) governs the use in civil proceedings of the information communicated pursuant to this Article;
- (c) governs responsibility for misuse of the right of information;
- (d) affords an opportunity for refusing to provide information that would force any other person referred to in paragraph 1 to admit their own participation or that of their close relatives in an infringement of an intellectual property right; or
- (e) governs the protection of confidentiality of information sources or the processing of personal data.

ARTICLE 18.51

Provisional and precautionary measures

1. Each Party shall ensure that its judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by the law of that Party, the continuation of the alleged infringement of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to prevent the entry into or movement within the channels of commerce of goods suspected of infringing an intellectual property right.

3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary halt on the transfer of, or dealing in, and, where the law of a Party so provides, the seizure of the movable and immovable property of the alleged infringer, including the freezing of the alleged infringer's bank accounts and other assets. To that end, the competent authorities may order the communication of relevant bank, financial or commercial information, or appropriate access to the relevant information.

4. Each Party shall ensure that its judicial authorities, in respect of the measures specified in paragraphs 1 to 3, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed, or that such infringement is imminent.

ARTICLE 18.52

Corrective measures

1. Each Party shall ensure that its judicial authorities may order, at the 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, the destruction or at least the definitive removal from the channels of commerce, of goods that they have found to be infringing an intellectual property right. If appropriate, under the same conditions, the judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of such goods.
2. Each Party shall ensure that its judicial authorities have the authority to order that the measures specified in paragraph 1 are carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

ARTICLE 18.53

Injunctions

Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, its judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Each Party shall also ensure that its judicial authorities may issue an injunction against an intermediary whose services are used by a third party to infringe an intellectual property right.

ARTICLE 18.54

Alternative measures

Each Party may provide that its judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 18.52 (Corrective measures) or Article 18.53 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 18.52 (Corrective measures) or Article 18.53 (Injunctions) if that person acted unintentionally and without negligence, if execution of the measures in question would cause that person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

ARTICLE 18.55

Damages

1. Each Party shall ensure that its judicial authorities, on application of the injured party, order the infringer who knowingly engaged, or had reasonable grounds to know it was engaging, in an infringing activity, to pay the right holder damages appropriate to the injury the right holder has suffered as a result of the infringement.

2. Each Party shall ensure that when its judicial authorities set the damages referred to in paragraph 1:

- (a) they take into account all appropriate aspects, such as the negative economic consequences, including lost profits, that the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or alternatively
- (b) 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 that would have been due if the infringer had requested authorisation to use the intellectual property right in question.

3. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party may lay down that its judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages that may be pre-established.

ARTICLE 18.56

Legal costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

ARTICLE 18.57

Publication of judicial decisions

Each Party shall provide that, in legal proceedings instituted for infringement of an intellectual property right, its judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

ARTICLE 18.58

Presumption of authorship or ownership

The Parties recognise that, for the purpose of applying the measures, procedures and remedies referred to in Section C (Enforcement of intellectual property rights):

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for the author's name to appear on the work in the usual manner;
and
- (b) point (a) shall apply to the holders of rights related to copyright with regard to their protected subject matter *mutatis mutandis*.

ARTICLE 18.59

Administrative procedures

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

SUB-SECTION 2

BORDER ENFORCEMENT

ARTICLE 18.60

Border measures

1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications to a Party's customs authorities requesting to suspend the release of or detain goods suspected of infringing at least trademarks, copyright and related rights, geographical indications and industrial designs (hereinafter referred to as "suspected goods").
2. Each Party shall have in place electronic systems for the management by its customs authorities of the applications referred to in paragraph 1.

3. Each Party shall provide that, where requested by its customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the suspected goods, including storage, handling, and any costs relating to the destruction or disposal of the suspected goods.
4. Each Party shall provide that its customs authorities decide about granting or recording an application referred to in paragraph 1 within a reasonable period of time.
5. Each Party shall provide for the granted or recorded application or recordation to apply to multiple shipments.
6. With respect to goods under customs control, each Party shall provide that its customs authorities may act upon their own initiative to suspend the release of or detain suspected goods.
7. Each Party shall ensure that its customs authorities use risk analysis to identify suspected goods.
8. Each Party shall have in place procedures allowing for the destruction of suspected goods without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, where the persons concerned agree or do not oppose the destruction. If such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, these goods are disposed of outside the commercial channels in a manner that avoids any harm to the right holder.

9. A Party may have in place procedures allowing for the swift destruction of counterfeit trademark and pirated goods sent in postal or express couriers' consignments.

10. A Party may decide not to apply this Article to the import of goods put on the market in another country by or with the consent of the right holders. A Party may also exclude from the application of this Article goods of a non-commercial nature contained in travellers' personal luggage.

11. Each Party shall ensure that its customs authorities maintain a regular dialogue and promote cooperation with the relevant stakeholders and where necessary with other authorities²³ involved in the enforcement of intellectual property rights.

12. The Parties shall cooperate in respect of international trade in goods suspected of infringing intellectual property rights. In particular, the Parties shall share information, to the extent possible and where necessary, on trade in goods suspected of infringing intellectual property rights affecting a Party.

13. Without prejudice to other forms of cooperation, the mutual administrative assistance provided for in the CCMAA, applies with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities of a Party are competent in accordance with this Article.

²³ For greater certainty, the term "other authorities" does not include judicial authorities.

ARTICLE 18.61

Consistency with GATT 1994 and the TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by its customs authorities, whether or not covered by this Sub-Section, each Party shall ensure consistency with its obligations under GATT 1994 and the TRIPS Agreement and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.

SECTION D

FINAL PROVISIONS

ARTICLE 18.62

Modalities of cooperation

1. The Parties shall cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter.
2. The cooperation of the Parties on intellectual property rights protection and enforcement matters, where necessary and as appropriate, may include the following activities:
 - (a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;

- (b) exchange of experience on legislative progress;
- (c) exchange of experience on the enforcement of intellectual property rights;
- (d) exchange of experiences on enforcement at central and sub-central levels by customs, police, administrative and judiciary bodies;
- (e) coordination to prevent exports of counterfeit goods, including coordination with third countries;
- (f) technical assistance, capacity building, exchange and training of personnel;
- (g) protection and defence of intellectual property rights and dissemination of information in this regard to *inter alia* business circles and civil society;
- (h) raising public awareness of consumers and right holders;
- (i) enhancement of institutional cooperation, particularly between the Parties' intellectual property offices;
- (j) awareness promotion and education of the general public on policies concerning the protection and enforcement of intellectual property rights;

- (k) promotion of protection and enforcement of intellectual property rights with public-private collaboration involving SMEs;
- (l) formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of violations of intellectual property rights, including the risk to health and safety and the connection to organised crime; and
- (m) exchange of information and experience on intellectual property-related aspects of genetic resources, traditional knowledge and traditional cultural expressions.

3. Each Party may make publicly available the product specifications, or a summary thereof, and relevant contact points for control or management of geographical indications of the other Party protected pursuant to Sub-Section 4 (Geographical indications).

4. The Parties shall, either directly or through the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications, maintain contact on all matters related to the implementation and functioning of this Chapter.

ARTICLE 18.63

Voluntary stakeholder initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringement, including online and in other marketplaces, focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned including in the following ways:

- (a) each Party shall endeavour to convene stakeholders consensually in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement;
- (b) the Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories; and
- (c) the Parties shall endeavour to promote open dialogue and cooperation among the Parties' stakeholders, and to encourage the Parties' stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement.

ARTICLE 18.64

Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications

1. This Article complements and further specifies Article 24.4 (Specialised committees).
2. The Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications, shall, with respect to this Chapter, have the following functions:
 - (a) exchange information and experiences on issues related to intellectual property, including in the area of geographical indications, including legislative and policy developments, and any other matter of mutual interest related to the implementation and operation of this Chapter;
 - (b) be responsible for exchanging information on geographical indications for the purpose of considering their protection in accordance with Article 18.34 (Protection of geographical indications); and
 - (c) further to Article 18.39(2) (General rules), deal with any matter arising from product specifications of protected geographical indications of the other Party listed in Annex 18-B (Lists of geographical indications).

