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The texts are published in view of the public interest in the negotiations for information purposes only and they may undergo further modifications, including as a result of the process of legal revision. These texts are without prejudice to the final outcome of the Agreement between the EU and New Zealand.

The texts will be final upon signature. The Agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

CHAPTER X

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS

ARTICLE X.1

Objectives

The objectives of this chapter are to:

- (a) Promote the creation, production, dissemination and commercialization of innovative and creative products 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 X.2

Scope

1. This Chapter shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.
2. The Parties shall give effect to the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.
3. This Chapter does not preclude either Party from introducing more extensive protection and enforcement of intellectual property rights, provided that such protection and enforcement does not contravene this Chapter.

ARTICLE X.X

Definitions

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

- (a) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C to the WTO Agreement;
- (b) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967;
- (c) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 revised at Paris on 24 July 1971 and amended on 28 September 1979.

- (d) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;
- (e) "WPPT" means the WIPO Performances and Phonograms Treaty, done at Geneva on 20 December 1996;
- (f) "WIPO" means the World Intellectual Property Organization;
- (g) "Intellectual property rights" means all categories of intellectual property that are covered by Articles X.7 to X.46 of this Chapter and Sections 1 to 7 of Part II of the TRIPS Agreement. The protection of intellectual property rights includes protection against unfair competition as referred to in Article 10bis of the Paris Convention;
- (h) "National" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party.

ARTICLE X.XX

International agreements

- 1. Each Party shall comply with its commitments under the following international agreements:
 - (a) The TRIPS Agreement;
 - (b) The WIPO Copyright Treaty done at Geneva on 20 December 1996;
 - (c) The WPPT;
 - (d) The Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabilities adopted in Marrakesh on 28 June 2013;

(e) The Trademark Law Treaty done at Geneva on 27 October 1994.¹

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

(a) The Treaty on Audiovisual Performances adopted in Beijing on 24 June 2012;

(b) The Singapore Treaty on the Law of Trademarks done at Singapore on 27 March 2006.

(c) The Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs of 2 July 1999

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

(a) The Protocol related to the Madrid Agreement concerning the International Registration of Marks adopted at Madrid on 27 June 1889 as amended on 3 October 2006 and on 12 November 2007;

(b) The Patent Cooperation Treaty, done at Washington on 19 June 1970, amended on 28 September 1979, as modified on 3 February 1984 and on 3 October 2001.

ARTICLE X.3

Exhaustion

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

¹ A Party may satisfy the obligation in Article X.17.2 by ratifying or acceding to the Singapore Treaty on the Law of Trademarks (2006).

ARTICLE X.4

National treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to the nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection² of intellectual property rights, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention for the Protection of Literary and Artistic Works revised at Paris on 24 July, 1971, the Rome Convention, WPPT, or the Treaty on Intellectual Property in Respect of Integrated Circuits adopted at Washington, on 26 May, 1989.

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 or regulations 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.

² For the purposes of this paragraph, “protection” shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Chapter including measures to prevent the circumvention of effective technological measures referred to in Article X.XX (Protection of technological measures) and measures concerning rights management information referred to in Article X.XX (Obligations concerning rights management information).

ARTICLE X.XX

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 by the Ministerial Conference of the WTO at Doha (referred to as the "Doha Declaration"). 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 related thereto, which entered into force on 23 January 2017.

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE X.6

Authors

Each Party shall provide for authors the exclusive right to authorise or prohibit:

1. Direct or indirect, temporary or permanent reproduction by any means and in any form, in

whole or in part of their works;

2. Any form of distribution to the public by sale or other transfer of ownership of the original of their works or of copies thereof;
3. 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;
4. The commercial rental to the public of originals or copies of their works in respect of at least phonograms, computer programs³ and cinematographic works.

ARTICLE X.7

Performers

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

1. The fixation⁴ of their performances;
2. 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;
3. Any form of distribution to the public, by sale or other transfer of ownership, of the fixations of their performances;
4. The making available to the public of fixations of their performances, by wire or wireless

³ A Party may exclude computer programs where the program itself is not the essential object of the rental.

⁴ 'Fixation' means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

5. 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;
6. The commercial rental to the public of the fixation of their performances.

ARTICLE X.8

Producers of phonograms

Each Party shall provide for phonogram producers the exclusive right to authorise or prohibit:

1. The direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part of their phonograms;
2. Any form of the distribution to the public, by sale or other transfer of ownership, of the fixations of their phonograms;
3. 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;
4. The commercial rental of their phonograms to the public.

ARTICLE X.9

Broadcasting organisations

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

1. The fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
2. 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;
3. 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;
4. The distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
5. 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 X.10

Broadcasting and communication to the public of phonograms published for commercial purposes⁵

1. Each Party shall provide a right in order to ensure that a single equitable remuneration is

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

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

paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or communication to the public.⁶

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

ARTICLE X.11

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 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 70 years after the work is lawfully made available to the public. However, when 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, the term of protection applicable shall be that laid down in paragraph 1.

4. Where a Party provides that the term of protection of a cinematographic or audiovisual work is calculated on a basis other than the life of a natural person, such term shall be no less than 70 years from the date of the first lawful publication or the first lawful communication to the public,

⁶ Each Party may decide that '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.

⁷ The obligation in this Article shall commence applying no later than 4 years after the date of entry into force of this Agreement

or, failing such lawful publication or communication to the public within 70 years from the making of the work, 70 years from the making.

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

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, the said 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 laid down in this Article shall be calculated from the 1st January of the year following the event.

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

ARTICLE X.12

Resale right⁸

⁸ The obligation in this Article shall commence applying no later than 2 years after the date of entry into force of this Agreement

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

ARTICLE X.13

Collective management of rights

1. The Parties recognise the importance of and 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 the territories of the Parties and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.
2. The Parties recognise the importance of and endeavour to promote transparency of collective management organisations, in particular regarding rights revenue they collect, deductions they apply to rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.
3. Each Party recognises the importance that, 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 representing collective management organisation does not discriminate against right-holders of the represented collective management organisation.

4. Each Party recognises the importance that 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 representing collective management organisation must accurately, regularly and diligently pay amounts owed to the represented collective management organisation as well as provide the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to this rights revenue.

ARTICLE X.14

Exceptions and limitations

Each Party shall provide for limitations or exceptions to the rights set out in Articles X.6 (Authors) to X.10 (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 holders.

ARTICLE X.15

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

⁹ New Zealand shall implement the obligations in this Article no later than 4 years after the date of entry into force of this Agreement. Prior to that date, New Zealand shall implement the obligations of this Article in accordance with New Zealand's law as at the date of entry into force of this Agreement.

reasonable grounds to know, that he or she is pursuing that objective.

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 a technological measure.

3. For the purposes of this Sub-Section, “technological measures” means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other protected subject matter, which are not authorised by the right holder of any copyright or related rights covered by this 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 does not prevent beneficiary persons from enjoying the exceptions and limitations provided for in accordance with Article X.14 (Exceptions and limitations).

ARTICLE X.16

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
- (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 he or she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by the law of a Party.

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

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

SUB-SECTION 2

TRADEMARKS

ARTICLE X.XX

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, 15 June, 1957, as revised and amended.

ARTICLE X.18

Signs of which a trade mark may consist

A trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, 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 Register of each Party trademarks, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

ARTICLE X.19

Rights conferred by a trademark

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

- (a) Any sign which is identical with the registered trademark in relation to goods or services which are identical with those for which the trademark is registered;
- (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 this 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 authorization a trademark which is identical to the trademark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark.¹⁰

3. Such entitlement referred to in paragraph 2 of the trademark proprietor 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 X.20

Registration procedure

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

2. Each Party shall provide for the possibility to oppose trademark applications or, when 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 X.21

Well-known trademarks

¹⁰ The Parties may take additional appropriate measures with a view to ensure the smooth transit of generic medicines.

For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention (1967) and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply the Joint Recommendation adopted by the assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO) at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO (September 1999).

ARTICLE X.22

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 they may provide other limited exceptions, provided such 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 to prohibit a third party from using, in the course of trade:
 - (a) His own name or address;
 - (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;
 - (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 he uses them in accordance with honest practices in industrial or commercial matters.
3. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Party in question and within the limits of the territory in which it is recognised.

ARTICLE X.23

Grounds for revocation

1. Each Party shall provide that a trademark shall be liable to revocation if, within a continuous period of time¹¹ determined by the domestic law of each Party, it 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 above continuous period of time and 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 time¹² determined by the domestic law of each Party preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of non-use referred to above, 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) In consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered;

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

¹¹ For the purpose of this Article, the period of time determined by the domestic law shall be of at least 3 years.

¹² For the purpose of this Article, the period of time determined by the domestic law shall be of at least one month

ARTICLE X.24

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 X.26

Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new or original¹³. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this sub-section.
2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the registered design or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.¹⁴

¹³ For the purpose of this Article, a Party may consider that a design having individual character is original.

¹⁴ Without otherwise limiting X.26.2, in relation to 'exporting' and 'stocking' a Party may satisfy this obligation in relation to 'exporting' and 'stocking' by providing the holder of the registered design the right to prevent third parties from offering for sale or hire, selling or hiring any article bearing or embodying the registered design in a way that gives rise to the

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

(a) If the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and

(b) To the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

4. "Normal use" within the meaning of paragraph 3(a) shall mean use by the end user, excluding maintenance, servicing or repair work.

ARTICLE X.27

Duration of protection

Each Party shall ensure that the right holder 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.

ARTICLE X.28

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

exporting or stocking of that article.

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.¹⁵

2. The duration of protection available for the unregistered design shall amount to at least three years as from the date on which the design was first made available to the public in the territory of the respective Party.

ARTICLE X.29

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.

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 which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

3. By way of derogation from paragraph 2, a design shall under the conditions set out in Article 26 (1) subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

¹⁵ Without otherwise limiting X.28, in relation to ‘exporting’ a Party may satisfy this obligation in relation to ‘exporting’ by providing the holder of the unregistered design the right to prevent third parties 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 that product.

ARTICLE X.30

Relationship to copyright

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

SUB-SECTION 4

GEOGRAPHICAL INDICATIONS

ARTICLE X.31

Scope and Procedures

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:
 - “geographical indications” means indications which identify a good as originating in the territory of a Party, or a region or locality in that Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
 - “product class” means a product class listed in Annex XX-A; and
 - “product specification” means, in relation to the relevant good for a geographical indication, the approved requirements for the use of that geographical indication in marketing 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 European Union listed

in Annex XX-B Section A according to at least the level of protection laid down in this Sub-Section.

4. Following the completion of an opposition procedure and an examination of the geographical indications the European Union shall protect the geographical indications of New Zealand listed in Annex XX-B Section B according to at least the level of protection laid down in this Sub-Section.

ARTICLE X.32

Amendment of the list of Geographical Indications

1. The Parties agree on the possibility to amend the list of geographical indications to be protected in Annex XX-B and/or to amend Annex XX-A by updating the list of product classes, in accordance with the procedure set out in Article X.65 (Institutional Provisions).
2. In accordance with Art X.2 (2) (Institutional Provisions), the Trade Committee may decide to amend Annex XX-B, 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.
3. Additions to the Annex XX-B from each Party shall not exceed 30 geographical indications every 3 years following the entry into force of the agreement. New geographical indications shall be added after having completed the opposition procedure in accordance with the criteria set out in Article X.32 (5) and after having been examined, to the satisfaction of both Parties.
5. Each Party shall provide that the objections to a request for protection of a geographical indication related to the opposition procedure referred to in Article X.31(3) and (4) may be made, and any such request for protection may be refused or otherwise not afforded. The grounds of objection shall be the following:
 - (a) It 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 similar products, or to a

trademark in respect of which in the Party rights have been acquired through use in good faith in respect of the same or similar products;

- (b) It is identical with or similar to a trademark in relation to any products that are not similar to the product in respect of which the trademark is registered where the trade mark is well known in the Party and the use of the geographical indication would indicate a connection between the products and the owner of the trade mark and the interests of the trade mark 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 territory of the Party;
 - (d) The geographical indication is a term that is used in the territory of the Party as the 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 product;
 - (e) It is a homonymous or partially homonymous geographical indication;
 - (f) Use or registration in the Party would be likely to be offensive.
6. For the purpose of this Sub-Section, in determining whether a term is customary in common language as the common name for the relevant good in the territory of a Party, the Party may take into account how consumers understand the term in the territory of that Party. Factors relevant to such consumer understanding may include evidence on whether the term is used to refer to the same type of product in question, as indicated by relevant sources; and how the product referenced by the term is marketed and used in trade in the territory of that Party.
7. In assessing the objections for protection submitted by a person against any of the grounds referred to in paragraph 4, each Party shall base those assessments only on the basis of the situation existing in that Party's territory.

Protection of Geographical Indications

1. Each Party shall, in respect of geographical indications of the other Party listed in Annex XX-B 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 good¹⁶ 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 translation¹⁷ or transliteration¹⁸, 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
 - (c) Any other use of a geographical indication which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention which may include commercial use of a geographical indication that exploits the reputation of that geographical indication, including when that product is used as an ingredient.

¹⁶ For the purposes of this Sub-Section, "like good" means a good that falls within the same product class as defined by the Annex XX-A of this Sub-Section.

¹⁷ For greater certainty, it is understood that this is assessed on a case-by-case basis. This provision does not apply where evidence is provided that there is no link between the geographical indication and the translated term.

¹⁸ For the purposes of this Sub-Section, transliteration covers the conversion of characters following the phonetics of the original language or languages of the relevant geographical indication.

2. Nothing in this Sub-Section shall require a Party to apply its provisions in respect of a geographical indication of the other Party listed in Annex XX-B which is no longer protected in accordance with the laws and regulations of the other Party.
3. If a Party's geographical indication listed in Annex XX-B ceases to be protected in the territory of the Party of origin, that Party shall promptly notify the other Party and request cancellation of protection for the 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 such name is used in such a manner to mislead the public.
5. Nothing in this Sub-Section shall require a Party to apply its provisions in respect of a geographical indication of the other Party with respect to products for which the relevant indication is identical or similar to the:
 - (a) 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 product; or
 - (b) Term customary in common language as the common name for such products in the territory of that Party.
6. Nothing in this Sub-Section shall require a Party to apply its provisions in respect of any individual component contained in a multicomponent geographical indication of the other Party with respect to products for which the individual component is identical or similar to the:
 - (a) 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 product or
 - (b) Term customary in common language as the common name for such products in the territory of that Party.
7. Nothing in this Sub-Section shall require a Party to apply its provisions in respect of any word, or translation or transliteration of any word, contained in a geographical indication of the

other Party where that word, translation or transliteration is a common English word such as “mountain”, “alps” or “river”.

ARTICLE X.33bis

Date of protection

1. The Parties shall provide that geographical indications listed in Annex XX-B, and referred to in article X.31 (Scope and Procedures), are protected in accordance with Article X.33 from the date entry into force of this agreement.
2. For geographical indications added to Annex XX-B after entry into force of this agreement, the Parties shall provide that these geographical indications are protected in accordance with Article X.33 from the date on which the names were published for opposition purposes referred to in Article X.32.5.

ARTICLE X.34

Right of use of Geographical Indications

1. A geographical indication protected under this Sub-Section may be used by any operator marketing a product, which conforms to the corresponding product specification.
2. Paragraph 1 of this article shall not restrict a Party’s ability to regulate the production or marketing of products which a geographical indication relates to, in accordance with that Party’s laws and regulations.

ARTICLE X.35

Relationship to trademarks

1. The registration of a trademark which contains or consists of a geographical indication of the other Party listed in Annex XX-B shall be refused or invalidated, ex officio if a Party's legislation so permits or at the request of an interested party, with respect to a product that falls within the product class specified in Annex XX-A for that geographical indication and that does not originate in the place of origin specified in Annex XX-B 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 as set out in Article X.33bis, 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 product notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties.

3. A Party may provide that any request made under this Sub-section 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 X.36

Enforcement of protection

Each Party shall provide for enforcement of the protection of geographical indications listed in Annex XX-B, ex officio or on request of an interested party, in accordance with its laws and regulations by appropriate administrative and judicial steps.

ARTICLE X.37

General rules

1. In the case of homonymous geographical indications, for which protection is requested in accordance with Article X.32 (Amendment of the list of Geographical Indications), of the Parties for products falling within the same product class, Parties shall mutually decide 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. If a Party, in the context of negotiations with a third country, proposes to protect a geographical indication identifying a product originating in the third country, if that indication is homonymous with a geographical indication of the other Party listed in Annex XX-B and if that product falls within the product class specified in Annex XX-A for the homonymous geographical indication of the other Party, the other Party shall be informed and be given the opportunity to comment before the geographical indication becomes protected.
3. Any matter arising from product specifications of protected geographical indications of the other Party listed in Annex XX-B shall be dealt with in the [joint working body defined by the Agreement] referred to in Article X.65 (Institutional Provisions).
4. A product specification of a geographical indication listed in Annex XX-B shall be that approved, including any amendments also approved, by the relevant authorities of the Party in the territory from which the product originates.
5. The protection of geographical indications of a Party listed in Annex XX-B may only be cancelled by the Party in which the product originates.
6. Goods which, either at the time of entry into force of this Agreement, the date of any amendment to the list of geographical indications under Article X.32, or at the end of any relevant transitional periods provided for in Annex XX-B, have been legally described and presented in a manner prohibited by this Agreement, may be marketed and sold until stocks are exhausted.

Systems of protections 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 of this article shall contain at least the following elements:
 - (a) An 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 as referred to in subparagraph (a) identifies a good as originating in the territory of a Party, or a region or locality in that Party's territory, 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, taking into account the legitimate interests of third parties and the users of the registered geographical indications in question.

SUB-SECTION 5

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE X.43

Scope of protection of trade secrets

1. In fulfilling its obligation to comply with the TRIPS Agreement, and in particular

paragraphs 1 and 2 of Article 39 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 purpose of this sub-section:

(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

(b) 'Trade secret holder' means any natural or legal person lawfully controlling a trade secret.

3. For the purpose of this sub-section, at least the following conducts shall be considered 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 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.

(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 subsection shall be understood as requiring any Party to consider any of the following conducts 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 relevant domestic law;

(d) Use by employees of their experience and skills honestly acquired in the normal course of their employment.

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

ARTICLE X.44

Civil judicial procedures and remedies of trade secrets

1. Each Party shall provide that its judicial authorities ensure that any person participating in the civil judicial proceedings referred to in Article X.43 (scope of protection of trade secrets) or who has 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 they have become aware as a result of such participation or access.

2. In the civil judicial proceedings referred to in Article X.43 (scope of protection of trade secrets), each Party shall provide that its judicial authorities have the authority at least to:

- (a) Order provisional measures, as set out in the respective domestic 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, she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the 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 their respective domestic law, the possibility of restricting access to certain documents in whole or in part; of restricting access to hearings and their corresponding records or transcript; and of making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted.
- (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 judicial procedures and remedies referred to in Article X.43 (scope of protection of trade secrets) when the conduct contrary to honest commercial practices is carried out, in accordance with their relevant domestic law, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by domestic law.

ARTICLE X.45

Protection of data submitted to obtain an authorisation
to put a pharmaceutical product¹⁹ on the market

1. Each Party shall protect commercially confidential information submitted to obtain an authorisation to place pharmaceutical products on the market (“marketing authorisation”) against disclosure to third parties, unless steps are taken to ensure that the data are protected against unfair commercial use or except where the disclosure is necessary for an overriding public interest.
2. Each Party shall ensure that for a period of 5 years from the date of a first marketing authorisation in the Party concerned (“first marketing authorisation”) and in accordance with any conditions set out in its domestic law, the authority responsible for the granting of a marketing authorisation does not accept any subsequent application for a marketing authorisation that relies on the results of pre-clinical tests or clinical trials submitted in the application 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 X.46

Protection of data submitted to obtain marketing authorisation
for agricultural chemical products²⁰

¹⁹ For the purposes of this Article, a “pharmaceutical product” is defined by the domestic legislation of each Party. In the case of the Union, a “pharmaceutical product” refers to a “medicinal product”.

²⁰ For the purposes of this Article, an “agricultural chemical product” is defined by the domestic legislation of each Party. In the case of the Union, an “agricultural chemical product” refers to a “plant protection product”.

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 such period, the test or study report shall not be used for the benefit of any other person who seeks to obtain a marketing authorisation for an agricultural chemical product, unless the explicit consent of the first owner is proved. For the purposes of this Article, that right is referred to as data protection.
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 of an authorisation in order to allow additional uses; and
 - (b) Be recognised to be compliant with the principles of good laboratory practice or of good experimental practice, in accordance with each Party's law.
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 X.47

Protection of plant varieties rights²¹

²¹ For greater certainty, the Parties understand that the measures referred to in Article X.4 [of the *Exceptions Chapter*] (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 4 are fulfilled.

Each Party shall have a system²² in place for the protection of plant varieties rights that gives effect to the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on 19 March, 1991.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE X.48

General obligations

1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.²³ Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

²² For greater certainty, for the purpose of this Sub-section, the system may be a *sui generis* system

²³ For the purposes of this Section, the term ‘intellectual property rights’ shall not include rights covered by Sub-Section 5 of Section B.

2. Those measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

ARTICLE X.49

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 and in Part III of the TRIPS Agreement:

- (a) The holders of intellectual property rights in accordance with the provisions of the applicable law;
- (b) All other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law;
- (c) Intellectual property collective rights management bodies which 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 provisions of the applicable law;
- (d) Professional defence bodies which 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 provisions of the applicable law.

ARTICLE X.50

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 his or her claims that his or her intellectual property right has been infringed or is about to be infringed, and subject to appropriate safeguards, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.

ARTICLE X.XX

Evidence

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

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

ARTICLE X.51

Right of information

1. Each Party shall ensure that, in the context of civil proceedings concerning an infringement

of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer or 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 which infringe an intellectual property right.

2. "Any other person" in paragraph 1 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 points (a), (b) or (c), as being involved in the production, manufacture or distribution of the goods or the provision of the services.
3. The Information referred to in paragraph 1 shall, as appropriate, comprise:
 - (a) The names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
 - (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 laws of a Party which:
 - (a) Grant the right holder rights to receive fuller information;
 - (b) Govern the use in civil proceedings of the information communicated pursuant to this Article;
 - (c) Govern responsibility for misuse of the right of information;

- (d) Afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit his own participation or that of his close relatives in an infringement of an intellectual property right;
- (e) Govern the protection of confidentiality of information sources or the processing of personal data.

ARTICLE X.52

Provisional and precautionary measures

1. Each Party shall ensure that its judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by the law of that Party, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe 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, the judicial authorities may order the precautionary halt on the transfer of, or dealing in, and, where a Party's domestic law 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 shall, in respect of the measures referred to in paragraphs 1-3, 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 X.53

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

ARTICLE X.54

Injunctions

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

ARTICLE X.55

Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article X.53 (Corrective measures) and/or Article X.54 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

ARTICLE X.56

Damages

1. Each Party shall ensure that its judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged 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:
 - (a) They take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or
 - (b) As an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.
3. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party may lay down that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established.

ARTICLE X.57

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 X.58

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 X.59

Presumption of authorship or ownership

The Parties shall recognise that for the purposes of applying the measures, procedures and remedies provided for in Section 3

- (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;
- (b) The provision under (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

ARTICLE X.60

Administrative procedures

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

SUB-SECTION 2

BORDER ENFORCEMENT

ARTICLE X.61

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 of or detain goods suspected of infringing at least trademarks, copyrights and related rights, geographical indications and industrial designs (hereinafter 'suspected goods').
2. Each Party shall have in place electronic systems for the management by customs of the applications.
3. Where requested by the customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the goods, including storage, handling, and any costs relating to the destruction or disposal of the goods.

4. Customs authorities should decide about granting or recording application within a reasonable period of time.
5. Each Party shall provide for such application/recording to apply to multiple shipments.
6. With respect to goods under customs control, customs authorities may act upon their own initiative to suspend the release or detain suspected goods.
7. Customs authorities shall 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 to prior administrative or judicial proceedings for the formal determination of the infringements, where the persons concerned agree or do not oppose to the destruction. In case such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, these goods are disposed of outside the commercial channel in such a manner to avoid any harm to the right holder.
9. Each 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 exclude from the application of this Article 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. The Customs authorities of each Party shall maintain a regular dialogue and promote cooperation with the relevant stakeholders and where necessary with other authorities²⁴ involved in the enforcement of intellectual property rights.
12. The Parties agree to cooperation in respect of international trade in goods suspected of infringing intellectual property rights. In particular, the Parties agree to share information, to the extent possible and where necessary, on trade in goods suspected of infringing intellectual property

²⁴ For greater certainty, other authorities shall not include any judicial authorities.

rights affecting the other Party.

13. Without prejudice to other forms of cooperation, the mutual administrative assistance provided for in the Agreement between the European Union and New Zealand on Cooperation and Mutual Administrative Assistance in Customs Matters, done at Brussels on 3 July 2017, will be applicable with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities are competent in accordance with this article.

ARTICLE X.62

Consistency with GATT and TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this sub-section, the Parties shall ensure consistency with their obligations under the GATT and TRIPS agreements and, in particular, with Article V of GATT agreement, Article 41 and Section 4 of the Part III of TRIPS agreement.

SECTION D

FINAL PROVISIONS

ARTICLE X.63

Modalities of cooperation

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter.
2. The Parties shall draw on the following modalities, among others, with respect to cooperation on intellectual property rights protection and enforcement matters. Where necessary, and as appropriate, the areas of cooperation 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 between the Parties on legislative progress;
- (c) Exchange of experience between the Parties on the enforcement of intellectual property rights;
- (d) Exchange of experiences between the Parties on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;
- (e) Coordination to prevent exports of counterfeit goods, including with other countries;
- (f) Technical assistance, capacity building; exchange and training of personnel;
- (g) Protection and defence of intellectual property rights and the dissemination of information in this regard in, inter alia, to business circles and civil society;
- (h) Public awareness of consumers and right holders; enhancement of institutional cooperation, particularly between the intellectual property offices;
- (i) Awareness promotion and education of the general public on policies concerning the protection and enforcement of intellectual property rights;
- (j) Promotion of protection and enforcement of intellectual property rights with public-private collaboration involving SMEs;
- (k) Formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of intellectual property rights' violations, including the risk to health and safety and the connection to organised crime;
- (l) 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 joint working body defined by the Agreement established in Article X.65 (Institutional Provisions), maintain contact on all matters related to the implementation and functioning of this Chapter.

ARTICLE X.64

Voluntary stakeholder initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringement, including over the Internet 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 X.65

Institutional provisions

The Committee on Trade in Services, Digital Trade, Establishment, Government Procurement and Intellectual Property Rights, including Geographical Indications, established pursuant to Article X.xx (Specialised Committees) [Institutional Provisions], shall be responsible for the effective implementation of this Chapter and to that end it shall:

- (a) Review and monitor the implementation and operation of this Chapter;
- (b) Exchange information and experiences on issues related to intellectual property, as well as 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;
- (c) Be responsible for exchanging information on geographical indications for the purposes of considering their protection in accordance with Article (X.33) (Geographical Indications) of this Chapter.
- (d) Be responsible for preparing recommendations for the Trade Committee to amend Annex XX-B (List of Geographical Indications) as regards geographical indications in accordance with Article (X.32) (Amendment of the GI list), and, when necessary and as appropriate, to amend Annex XX-A by updating the list of product classes;
- (e) Report the outcomes of its discussions to the FTA Trade Committee; and
- (f) Carry out any other functions as may be delegated by the FTA Trade Committee.

ANNEX XX-A PRODUCT CLASSES²⁵

1. “Fresh, frozen and processed meats” means products falling under Chapter 2 and heading 16.01 or 16.02 of the Harmonized System;
2. “Hops” means products falling under heading 12.10 of the Harmonized System;
3. “Fresh, frozen and processed fish products” means products falling under Chapter 3 and products containing fish falling under heading 16.03, 16.04 or 16.05 of the Harmonized System;
4. “Butter” means products falling under heading 04.05 of the Harmonized System;
5. “Cheeses” means products falling under heading 04.06 of the Harmonized System;
6. “Fresh and processed vegetable products” means products falling under Chapter 7 of the Harmonized System and products containing vegetables falling under Chapter 20 of the Harmonized System²⁶;
7. “Fresh and processed fruits” means fruit products falling under Chapter 8 of the Harmonized System and products containing fruits falling under Chapter 20 of the Harmonized System;
8. “Fresh and processed nuts” means nut products falling under Chapter 8 of the Harmonized System and products containing nuts falling under Chapter 20 of the Harmonized System;
9. “Spices” means spice products falling under Chapter 9 of the Harmonized System;
10. “Cereals” means products falling under Chapter 10 of the Harmonized System;
11. “Products of the milling industry” means products falling under Chapter 11 of the Harmonized System;
12. “Oilseeds” means oilseed products falling under Chapter 12 of the Harmonized System;
13. “Oils and animal fats” means products falling under Chapter 15 of the Harmonized System;
14. “Confectionery and baked products” means products falling under heading 17.04, 18.06, 19.04, or 19.05 of the Harmonized System;
15. “Pasta” means products falling under heading 19.02 of the Harmonized System;
16. “Table and processed olives” means products falling under heading 20.01 or 20.05 of the Harmonized System;
17. “Mustard paste” means products falling under sub-heading 21.03.30 of the Harmonized System;
18. “Beer” means products falling under heading 22.03 of the Harmonized System;
19. “Vinegar” means products falling under heading 22.09 of the Harmonized System;
20. “Essential oils” means products falling under heading 33.01 of the Harmonized System;

25 The product classes apply in relation to Sub-section 4

26 Other than to the extent the product falls within class 16 below.

21. "Gums and natural resins" means products falling under heading 13.01 of the Harmonized System.
22. "Spirits" means products falling under heading 22.08 of the Harmonized System
23. "Wines" means products falling under heading 22.04 of the Harmonized System.
24. "Fresh molluscs, and crustaceans and products derived therefrom" means molluscs, crustaceans products falling under Chapter 3 and products containing molluscs, crustaceans and marine invertebrates falling under heading 16.03, 16.04 or 16.05 of the Harmonized System.
25. "Honey" means products falling under heading 04.09 of the Harmonized System.
26. "Flowers and ornamental plants" means products falling under Chapter 6 of the Harmonized System.

ANNEX XX-B List of GIs