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CHAPTER 17

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS AND BASIC PRINCIPLES

ARTICLE 17.1

Objectives

1. The objectives of this Chapter are to:
 - (a) facilitate the production and commercialisation of innovative and creative goods and the provision of innovative and creative services between the Parties; and
 - (b) increase the benefits from trade and investment between the Parties through an adequate and effective level of protection of intellectual property rights, and the provision of measures for the effective enforcement of such rights.
2. The objectives set out in Article 7 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.

ARTICLE 17.2

Principles

1. The principles set out in Article 8 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.
2. Taking into consideration the underlying public policy objectives of their respective domestic systems, the Parties recognise the need to:
 - (a) promote innovation and creativity;
 - (b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and
 - (c) foster competition and open and efficient markets;

through their respective intellectual property systems, while respecting the principles of transparency, and taking into account the interests of relevant stakeholders, including right holders, users and the general public.

4. The Parties recognise the importance of effective protection against acts of unfair competition in accordance with Article 10*bis* of the Paris Convention.

ARTICLE 17.3

Nature and scope of obligations

1. This Chapter complements the rights and obligations of each Party under the TRIPS Agreement and other international agreements in the field of intellectual property.
2. Each Party shall give effect to this Chapter. A Party may provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement is not inconsistent with this Chapter. Each Party shall

be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

ARTICLE 17.4

Definitions

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

- (a) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 as revised at Paris on 24 July 1971 and amended on 28 September 1979;
- (b) "Declaration on TRIPS and Public Health" means the Declaration on the TRIPS Agreement and Public Health adopted at Doha on 14 November 2001 by the Ministerial Conference of the WTO;
- (c) "Geneva Act (1999)" means the Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999;
- (d) "intellectual property" means:
 - (i) all categories of intellectual property that are the subject of Sections 1 to 7 of Part II of the TRIPS Agreement, namely:
 - (A) copyright and related rights;
 - (B) trademarks;
 - (C) geographical indications;
 - (D) industrial designs;
 - (E) patents;

(F) layout-designs (topographies) of integrated circuits; and

(G) protection of undisclosed information; and

(ii) plant variety rights;

(e) "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 multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting Party, or in the TRIPS Agreement;

(f) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Stockholm on 14 July 1967;

(g) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;

(h) "WIPO" means the World Intellectual Property Organization;

(i) "WCT" means WIPO Copyright Treaty adopted in Geneva on 20 December 1996; and

(j) "WPPT" means the WIPO Performances and Phonograms Treaty done at Geneva on 20 December 1996.

ARTICLE 17.5

International agreements

1. Each Party affirms its commitment to comply with its obligations under the following international agreements:

(a) the TRIPS Agreement;

- (b) the WCT;
- (c) the WPPT;
- (d) the 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) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989, as last amended on 12 November 2007.

2. Each Party affirms that it has acceded to, or will make all reasonable efforts to ratify or accede to, the following international agreements:

- (a) the Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006; and
- (b) the Geneva Act (1999).

3. Each Party shall ensure that the procedures provided under the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 3 October 2001, are available in its territory.

ARTICLE 17.6

Exhaustion

Nothing in this Chapter prevents a Party from determining whether and under what conditions the exhaustion of intellectual property rights applies.

ARTICLE 17.7

National treatment

1. In respect of all categories of intellectual property rights covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its

own nationals with regard to the protection¹ of intellectual property rights, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, 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.

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, only where such exceptions are:

- (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 17.8

TRIPS Agreement and public health

1. The Parties recognise the importance of the Declaration on TRIPS Agreement and Public Health. This Chapter shall be interpreted and implemented consistently with that Declaration.

¹ For the purposes of this paragraph, the term "protection" shall include: (a) 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; (b) measures to prevent the circumvention of effective technological measures set out in Article 17.21 (Protection of technological measures); and (c) measures concerning rights management information set out in Article 17.22 (Obligations concerning rights management information).

2. This Chapter does not, and should not, prevent a Party from taking measures to protect public health and should be interpreted and implemented in a manner that promotes access to medicine for all.

3. Each Party shall implement Article 31*bis* of the TRIPS Agreement, and the Annex and the Appendix to the Annex to the TRIPS Agreement.

4. Nothing in this Chapter shall limit a Party's rights and obligations pursuant to Article 31 and Article 31*bis* of the TRIPS Agreement, and the Annex and the Appendix to the Annex to the TRIPS Agreement.

Article 17.9

Indigenous knowledge of Australian First Nations peoples

1. The Parties recognise the value, for Australia, of enabling the involvement of Australian First Nations peoples in international trade and in the protection of indigenous knowledge of Australian First Nations peoples. Furthermore, the Parties acknowledge the cultural significance, for Australia, of such knowledge, including knowledge about traditional foods, language, song, dance, works of art and the names and uses of plants. To this end, the Parties shall endeavour to cooperate on activities related to such knowledge, including activities on geographical indications, where relevant for the implementation of this Chapter, through the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property Rights, including Geographical Indications.

Article 17.10

Genetic resources, traditional knowledge and traditional cultural expressions

1. The Parties recognise the importance and value of genetic resources and associated traditional knowledge, including when related to intellectual property systems.

2. The Parties affirm the importance of working towards a multilateral outcome on intellectual property related aspects of genetic resources, traditional knowledge and traditional cultural expressions, including through WIPO.

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 17.11

Definitions

For the purposes of this Sub-Section, the terms "broadcasting", "communication to the public of a performance or a phonogram", "performers", "phonogram", "producer of a phonogram" and "publication" shall be interpreted according to the definitions of those terms in the WPPT.

ARTICLE 17.12

Authors²

Each Party shall provide authors with the exclusive right to authorise:

- (a) the temporary or permanent reproduction in any manner or form, in whole or in part, of their

² The Parties understand that the term "original and copies", as used in this Sub-Section, refers exclusively to fixed copies that can be put into circulation as tangible objects.

works³;

- (b) any form of distribution to the public of the original and copies of their works through sale or other transfer of ownership;⁴ and
- (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.⁵

ARTICLE 17.13

Performers

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

- (a) the fixation of their unfixed performances;
- (b) the direct or indirect, temporary or permanent reproduction of their performances fixed in phonograms, in any manner of form, in whole or in part;
- (c) the distribution to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership;⁶

³ For greater certainty, for the purposes of this Chapter, the term "work" includes a cinematographic work, photographic work and computer program.

⁴ For the purposes of the implementation of this Sub-Section, each Party may interpret the term "distribution" as synonymous with the term "making available" pursuant to Article 6 of the WCT.

⁵ This point is without prejudice to point (ii) of Article 11(1), points (i) and (ii) of Article 11*bis*(1), point (ii) of Article 11*ter*(1), point (ii) of Article 14(1) and Article 14*bis*(1) of the Berne Convention.

⁶ For the purposes of the implementation of this Sub-Section, each Party may interpret the term "distribution" as synonymous with the term "making available" pursuant to Article 8 of the WPPT.

- (d) the making available to the public of their performances fixed in 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;
- (e) the broadcasting by wireless means and the communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and
- (f) the commercial rental to the public of the original and copies of their performances fixed in phonograms as determined in the law of a Party, even after distribution of them by, or pursuant to, authorisation by the performer.

ARTICLE 17.14

Producers of phonograms

Each Party shall provide producers of phonograms with the exclusive right to authorise:

- (a) the direct or indirect, temporary or permanent, reproduction of their phonograms in any manner or form, in whole or in part;
- (b) the distribution to the public of the original and copies of their phonograms through sale or other transfer of ownership;⁷
- (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 to the public of the original and copies of their phonograms even after distribution of them by, or pursuant to, authorisation by the producer.

⁷ For the purposes of the implementation of this Sub-Section, each Party may interpret the term "distribution" as synonymous with the term "making available" pursuant to Article 12 of the WPPT.

Article 17.15

Broadcasting organisations

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

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

ARTICLE 17.16

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

1. Each Party shall provide performers and producers of phonograms the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.⁸
2. Each Party may establish in their laws and regulations that the single equitable remuneration shall be claimed from the user by the performer or the producer of a phonogram or by both. Each Party may enact laws and regulations that, in the absence of an agreement between the performer and the producer of a phonogram, set the terms according to which performers and producers of phonograms shall share the single equitable remuneration.
3. For the purposes of this Article, phonograms made available to the public 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 shall be considered as if they had been published for commercial purposes.

⁸ This paragraph is subject to any commitments and reservations of a Party under the WPPT.

ARTICLE 17.17

Term of protection

1. The rights of an author of a work shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public.
2. Notwithstanding paragraph 1, each Party may provide for specific rules on the calculation of the term of protection of musical composition with words, works of joint authorship as well as cinematographic or audiovisual works. Each Party may provide for specific rules on the calculation of the term of protection of anonymous or pseudonymous works.
3. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast.
4. The rights of performers of phonograms shall expire 50 years after the date of the fixation of the performance. However, if the phonogram has been lawfully published or, where provided for by a Party, lawfully communicated to the public or otherwise lawfully made public, within this period, the term of protection shall expire 70 years from the date of the first such publication or, where provided by a Party, the first such communication to the public or the first such instance of otherwise making public. Where a Party provides for two or more of these possibilities, the term of protection shall be calculated from whichever event occurs earlier.
5. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, the term of protection shall expire 70 years from the date of the first lawful publication or, where provided by a Party's law, from the date of the first lawful communication to the public or first lawfully making public, where such publication, communication to the public or making public occurs within the 50 years after the fixation is made.
6. The terms of protection laid down in this Article shall be calculated from the first of January of the year following the year of the event which gives rise to them. With respect to works created and performances performed before 1 January 2019, a Party may continue to apply the terms of protection that were applicable at the date of entry into force of this Agreement.
7. Each Party may provide for longer terms of protection than those provided for in this Article.

ARTICLE 17.18

Resale right

1. Each Party shall provide, for the benefit of the author of an original work of art⁹, an inalienable resale 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 procedure for collection of the royalties, its amounts and the criteria for the works, acts of resale and authors eligible to receive the royalty shall be a matter for determination by the law of each Party.

ARTICLE 17.19

Collective management of rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in 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 shall 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 they collect, the distribution policy and their repertoire.
3. Each Party shall ensure that collective management associations established in its territory and representing another collective management organisation established in the territory of the other Party by way of a representation agreement, are encouraged to accurately, regularly and diligently pay amounts owed to the represented collective management organisations as well as to provide

⁹ For Australia, this means visual art. For the Union, this means works of graphic or plastic art.

those organisations with information on the amount of rights revenue collected on their behalf and any deductions from that rights revenue.

ARTICLE 17.20

Exceptions and limitations

1. Each Party shall confine limitations or exceptions to the rights set out in Articles 17.12 (Authors) to 17.16 (Broadcasting and communication to the public of phonograms published for commercial purposes) to certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holders.
2. This Article is without prejudice to the limitations and exceptions to any rights provided by the TRIPS Agreement, or by multilateral agreements concluded or administered under the auspices of WIPO.

ARTICLE 17.21

Protection of technological measures

1. For the purposes of this Article, the term "effective technological measures" means any technology, device, or component that, in the normal course of its operation, is used by authors, performers or producers of phonograms in connection with the exercise of their rights under this Sub-Section and that prevents or restricts acts, in respect of their works, performances or phonograms, that are not authorised by the authors, performers or producers of phonograms.
2. Each Party shall provide adequate legal protection and effective legal remedies against the unauthorised circumvention of effective technological measures, where such circumvention is carried out knowingly or with reasonable grounds to know. Each Party may provide for a specific regime for legal protection of technological measures used to protect computer programs.
3. Each Party shall provide adequate legal protection and effective legal remedies against the

manufacture, import, distribution, sale, rental, offer or advertisement for sale or rental, of devices, products or components or the provision of services which:

- (a) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures;
- (b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or
- (c) are primarily designed, produced or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

4. Each Party may provide for exceptions and limitations to measures implementing paragraphs 2 and 3 in accordance with its law and the relevant international agreements referred to in Article 17.5(1) (International agreements), provided that such exceptions and limitations do not significantly impair the adequacy of legal protection or the effectiveness of legal remedies provided by those measures against the acts prescribed in paragraphs 2 and 3.

ARTICLE 17.22

Obligations concerning rights management information

1. For the purposes of this Article, the term "rights-management information" means:
 - (a) 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;
 - (b) information about the terms and conditions of use of the work or other subject matter referred to in this Article; or
 - (c) any numbers or codes that represent such information.

2. Paragraph 1 applies if any of the items of information referred to in paragraph 1 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.

3. Each Party shall provide adequate legal protection against any person knowingly performing without authority:

(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 under 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 doing so they are inducing, enabling, facilitating or concealing an infringement of any copyright or related rights.

4. Each Party shall confine exceptions to measures implementing this Article to lawfully authorised activities carried out by government employees, agents, contractors for the purpose of law enforcement, intelligence, essential security or similar government purposes.

SUB-SECTION 2

TRADEMARKS

ARTICLE 17.23

Trademark classification

Each Party shall adopt or 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 17.24

Signs of which a trademark may consist

A Party shall not require, as a condition of registration of a trademark, that a sign be visually perceptible, nor deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound.

ARTICLE 17.25

Rights conferred by a trademark

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

ARTICLE 17.26

Registration and opposition procedure

1. Each Party shall provide for a system for the examination and registration of trademarks in which each final refusal taken by the competent authorities shall be communicated in writing to the relevant party, duly reasoned and subject to judicial appeal.
2. Each Party shall provide for the possibility to oppose the registration of a trademark.¹⁰

¹⁰ For greater certainty, each Party may provide for opposition before or after registration.

ARTICLE 17.27

Electronic trademarks database

1. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.
2. Each Party recognises the importance of providing a system for the electronic application and maintenance of trademarks.

ARTICLE 17.28

Well-known trademarks

Each Party shall provide for 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 give consideration to 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 17.29

Exceptions to the rights conferred by a trademark

Provided that such exceptions take account of the legitimate interests of the owners of the trademarks and of third parties, each Party:

- (a) shall provide for the fair use of descriptive terms¹¹ as a limited exception to the rights conferred by trademarks; and

¹¹ For greater certainty, the fair use of descriptive terms may include terms to indicate the geographical origin of the goods or services.

- (b) may provide for other limited exceptions to the rights conferred by trademarks.

ARTICLE 17.30

Collective and certification marks

1. Each Party shall provide that trademarks include collective marks and may provide that trademarks include certification marks.
2. Each Party may provide that signs that may serve as geographical indications are capable of protection under its trademark system.

ARTICLE 17.31

Cancellation¹²

1. Each Party shall provide that its competent authority, upon request, has the authority to cancel a trademark, if within a period of time determined by the law of that Party, the trademark has not been used¹³ in the relevant territory in connection with the goods or services in respect of which it is registered, and, subject to that Party's law, there are no proper reasons for non-use.
2. Each Party shall provide that its competent authority, upon request, has the authority to cancel a trademark if, after the date on which the trademark was registered:
 - (a) it has become the common name in the trade for a good or service in respect of which it is registered;¹⁴ or

¹² For greater certainty, a Party may define cancellation as revocation or removal.

¹³ A Party may require that the use is of genuine character or made in a quantity or manner corresponding to commercial use or is in good faith. A Party may further decide to disregard the commencement or resumption of use just before the filing of the cancellation request.

¹⁴ For greater certainty, a Party may require that the trademark may only be cancelled if it has become common in consequence of acts or inactivity of the proprietor.

- (b) it is liable to mislead the public, including as to the nature, quality or geographical origin of those goods or services for which it was registered.¹⁵

ARTICLE 17.32

Bad faith applications

Each Party shall provide that its competent authority, upon request, has the authority to invalidate a trademark where the application for registration of the trademark was made in bad faith. Each Party may also provide that a trademark shall not be registered where the application for registration of the trademark was made in bad faith.

SUB-SECTION 3

INDUSTRIAL DESIGNS

ARTICLE 17.33

International agreements

Each Party shall make all reasonable efforts to accede to the Geneva Act (1999).

ARTICLE 17.34

Protection of industrial designs

1. Each Party shall provide for the protection of independently created industrial designs that are

¹⁵ For greater certainty, a Party may require that the trademark may only be cancelled if it has become misleading in consequence of the use made of it by the proprietor or with the proprietor's consent.

new and original.¹⁶ This protection shall be provided by registration¹⁷ and shall confer an exclusive right upon owners of such industrial designs in accordance with the provisions of this Sub-Section.

2. The owner of a registered industrial design shall have the right to prevent third parties not having the owner's consent at least from making, offering for sale, selling, using or importing products bearing or embodying a design which is identical or similar¹⁸ to the registered industrial design, when such acts are undertaken for commercial purposes.

ARTICLE 17.35

Duration of protection

Each Party shall ensure that the total duration of protection available for registered industrial designs amounts to at least 10 years from the date of filing of the application.

ARTICLE 17.36

Unregistered appearance of products

1. The Parties recognise that the appearance of a product may be protected through industrial designs, copyright or unfair competition law.

2. Each Party shall provide legal means to prevent the use of the unregistered appearance of a product if such use results from copying the unregistered appearance of the product, to the extent provided by its laws and regulations.

¹⁶ For the purposes of this Article, a Party may consider that a design that is distinctive or that has individual character is original.

¹⁷ For greater certainty, for the purposes of this Sub-Section, Australia may interpret "registration" as "registration and certification".

¹⁸ For greater certainty, for the purposes of this Sub-Section, Australia may interpret "similar" as "substantial similarity in overall impression".

ARTICLE 17.37

Exceptions

Each Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of registered industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected industrial design, taking account of the legitimate interests of third parties.

SUB-SECTION 4

GEOGRAPHICAL INDICATIONS

ARTICLE 17.38

Scope and procedures

1. This Sub-Section applies to the protection of geographical indications originating in the territory of a Party. A Party shall protect the geographical indications of the other Party listed in Annex 17 (Lists of geographical indications) according to the level of protection provided in this Agreement.
2. For the purposes of this Sub-Section:
 - (a) "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; and
 - (b) "product specification" means, in relation to the relevant product for a geographical indication, the approved requirements for the use of that geographical indication in marketing that product.

3. Geographical indications of a Party, which are to be protected by the other Party, shall only be subject to this Sub-Section:

- (a) if they are protected as geographical indications in accordance with the system referred to in Article 17.39 (System of registration and protection of geographical indications) in the territory of the Party of origin; and
- (b) if the associated goods for those geographical indications fall within the scope of the relevant laws or regulations of the Party in which protection is sought; and
- (c) following the completion of an objection procedure and an examination by the Party in which protection is sought.

ARTICLE 17.39

System of registration and protection of geographical indications

1. Each Party recognises that geographical indications may be protected through a trademark or *sui generis* system or other legal means.
2. Each Party shall maintain a system for the registration and protection, at least at the level of protection provided for in Article 17.41(1) (Protection of geographical indications), of geographical indications in its territory. The system shall include at least the following elements:
 - (a) accepting requests for the protection of geographical indications without requiring intercession by a Party on behalf of its nationals;
 - (b) publishing registered geographical indications in the territory of a Party;
 - (c) processing requests for the protection of geographical indications without requiring compliance with unreasonable procedures or formalities;
 - (d) ensuring that its laws and regulations governing the protection of geographical indications are readily available to the public and clearly set out procedures relating to their protection including procedures for the filing of requests;

- (e) making available sufficient information to allow any person to ascertain the status of specific requests for protection;
- (f) ensuring that all requests for protection of geographical indications are published for objection;
- (g) providing procedures for objecting to the protection of a geographical indication which shall allow the legitimate interests of third parties to be taken into account and include an opportunity and a reasonable period of time to object before the geographical indication is protected. Such objections shall be accepted without requiring intercession by a Party on behalf of its nationals. In assessing objections for protection, each Party shall base those assessments on the situation existing in that Party's territory; and
- (h) providing for the cancellation of the protection of a geographical indication.

ARTICLE 17.40

Amendment of the lists of geographical indications

1. The Parties may amend the lists of protected geographical indications in Annex 17 (Lists of geographical indications) in accordance with the procedure set out in Article 17.69 (Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property Rights). Amendments may include the addition of geographical indications or the removal of geographical indications which have ceased to be protected in their place of origin.
2. Without prejudice to paragraph 1, after the date of entry into force of this Agreement, up to four amendments may take place, in accordance with paragraph 1, based on the transmission by Australia of a request to add a cumulative total of 40 geographical indications to Annex 17 (Lists of geographical indications). These shall be processed and protected in the Union in accordance with Article 17.38(3).
3. The Parties recognise the value, for Australia, of geographical indications that protect, preserve or promote the indigenous knowledge of Australian First Nations peoples, and shall give

such geographical indications due consideration when considering amendments to Annex 17 (Lists of geographical indications).

ARTICLE 17.41

Protection of geographical indications

1. Each Party shall, in respect of geographical indications of the other Party listed in Annex 17 (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 good 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 translation or transliteration; 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 10*bis* of the Paris Convention, which may include when used as an ingredient.
2. When a Party, in the context of bilateral negotiations with a third country, proposes to protect a geographical indication of that third country which is wholly or partially homonymous with a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications), it shall inform the other Party thereof and give it an opportunity to comment before the third country's geographical indication becomes protected.

3. Without prejudice to Article 23(3) of the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which wholly or partially homonymous geographical indications listed in Annex 17 (Lists of geographical indications) will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
4. A Party may only cancel the protection of a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) if that geographical indication has been cancelled, or its protection revoked or otherwise ceased, in the Party of origin.
5. A product specification referred to in this Sub-Section shall be the specification approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates.

ARTICLE 17.42

Exceptions

1. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) which is not, or ceases to be protected, or has fallen into disuse in the territory of origin. Each Party shall promptly notify the other Party if a geographical indication listed in Annex 17 (Lists of geographical indications) ceases to be protected in the territory of that Party and request cancellation of protection for that geographical indication in accordance with Article 17.69 (Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property Rights, including Geographical Indications).
2. Nothing in this Sub-Section shall prejudice the right of any person to use, in the course of trade, that person's name, address, or the name of that person's predecessor in business, except where such name is used in relation to a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) in such a manner to mislead the public.
3. Nothing in this Sub-Section shall prevent the use in the territory of a Party, with respect to

any good, of a customary name of a plant variety, or an animal breed, existing in the territory of that Party, including where such names are individual components of a multi-component term that is protected as a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications).

4. 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, translation or transliteration is a common English word such as "mountain", "alps" or " river".

5. Nothing in this Sub-Section shall require a Party to apply the provisions of this Sub-Section in respect of an individual component of a multi-component term that is protected as a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) which is identical with the term customary in common language as the common name for the associated good in the territory of that Party.

6. If a translation or a transliteration of a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) is identical with or contains within it a term customary in common language as the common name for a good in the territory of a Party, this Sub-Section shall not prejudice the right of any person to use that term in association with that good in the territory of that Party.

7. Goods which, either at the date of entry into force of this Agreement, the date of any amendment to the list of geographical indications under Article 17.40 (Amendment of the list of geographical indications), or at the end of any relevant transitional periods provided for in Annex 17 (Lists of geographical indications), have been legally described and presented in a manner prohibited by this Agreement, may be marketed under the following conditions:

- (a) for wholesale, for a period of five years; and
- (b) for retail, until stocks are exhausted.

ARTICLE 17.43

Use of geographical indications

1. Any person is eligible to use a geographical indication listed in Annex 17 (Lists of geographical indications) where their product conforms to the corresponding specification.
2. Once a geographical indication listed in Annex 17 (Lists of geographical indications) is protected under this Agreement, the use of such protected name shall not be subject to any registration of users or further charges.

ARTICLE 17.44

Relationship to trademarks

1. The registration of a trademark which is identical or similar to a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) with respect to the associated good of that geographical indication and where that good does not meet the applicable product specification for that geographical indication, shall be refused or invalidated, *ex officio* or at the request of an interested party if a Party's laws or regulations so permits, provided that the application to register the trademark is submitted after the date of submission of the application for protection of the geographical indication in the territory of the Party concerned.
2. For geographical indications listed in Annex 17 (Lists of geographical indications) at the date of entry into force of this Agreement, the date of submission of the application for protection referred to in paragraph 1 shall be the date of entry into force of this Agreement.
3. For geographical indications added to the list in Annex 17 (Lists of geographical indications), as referred to in Article 17.40 (Amendment of the list of geographical indications), the date of submission of the application for protection referred to in paragraph 1 shall be the date on which the competent authority of a Party receives from the other Party a request to protect a geographical indication under this Agreement.
4. 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 submission of the application for protection of a geographical indication listed in Annex 17 (Lists of geographical indications),

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 or similar to a geographical indication. Such trademark may continue to be used and renewed, notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the Party's law.

5. As regards geographical indications listed in Annex 17 (Lists of geographical indications) on the date of entry into force of this Agreement, an interested person may, in support of its claim that a trademark was applied for in bad faith, provide information to Australia's competent authorities that:

- (a) the trademark was applied for in Australia between the date of publication for objection and the date of entry into force of this Agreement; and
- (b) relates to a situation referred to in paragraph 1.

The competent authority shall consider such information, if admissible as evidence, with regard to the circumstances referred to in Article 17.31 (Bad faith applications).

ARTICLE 17.45

Enforcement of protection

Each Party shall provide for enforcement of the protection of geographical indications listed in Annex 17 (Lists of geographical indications), *ex officio* or on request of an interested party, in accordance with its laws and regulations by appropriate administrative and judicial steps.

SUB-SECTION 5

PATENTS

ARTICLE 17.46

Exceptions

Each Party may provide limited exceptions to the exclusive rights conferred by a patent in accordance with Article 30 of the TRIPS Agreement, including exceptions permitting acts that would otherwise infringe a patent if such acts are done for experimental purposes relating to the subject matter of a patented invention, as well as acts done for purposes connected with obtaining regulatory approval.

ARTICLE 17.47

Extension of the period of protection conferred by a patent on medicinal products¹⁹

1. The Parties recognise that medicinal products protected by a patent in the territory of a Party may be subject to an administrative authorisation procedure before being put on that Party's market.
2. Each Party shall provide for a further period of protection, in accordance with its laws and regulations, for a medicinal product which is protected by a patent and which has been subject to an administrative authorisation procedure referred to in paragraph 1 to compensate the holder of a patent for a reduction of effective patent protection. The terms and conditions for the provision of such further protection, including its length, shall be determined in accordance with the laws and regulations of the Parties.

SUB-SECTION 6

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 17.48

¹⁹ For Australia, a reference in this Article to medicinal product means pharmaceutical substance as provided for in its relevant law.

Scope of protection of trade secrets and definitions

1. Each Party shall provide for 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 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 conducts shall be considered contrary to honest commercial practices:
 - (a) the acquisition of a trade secret without the consent of the trade secret holder, carried out by unauthorised access to, or by appropriation of or copying of any objects, documents, 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 without the consent of the trade secret holder, by a person who is found to be in breach of a duty to limit the use of the trade secret or of a duty not to disclose the trade secret; or
 - (c) acquisition, use or disclosure by a person who knew or ought, under the circumstances, to

have known²⁰ that the trade secret had been obtained from another person who was using or disclosing the trade secret unlawfully.

ARTICLE 17.49

Civil judicial procedures and remedies as regards trade secrets

1. Each Party shall ensure that its judicial authorities have the authority to order that any person participating in or having access to documentation, evidence or hearings of civil judicial proceedings referred to in Article 17.48(1) (Scope of protection of trade secrets and definitions) is not permitted to use or disclose, for a purpose other than the conduct of the proceedings, any trade secret, or alleged trade secret, which that person has become aware of as a result of such participation or access.
2. In the proceedings referred in Article 17.48(1) (Scope of protection of trade secrets and definitions), each Party shall provide that its judicial authorities have the authority, in accordance with the law of that Party, at least to:
 - (a) order provisional measures or injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;
 - (b) order the person whose conduct was considered contrary to honest commercial practices to pay the trade secret holder damages;
 - (c) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in such proceedings. Such specific measures may include the possibility of restricting access to certain documents and hearings, and of making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted; and

²⁰ For the purposes of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

(d) impose sanctions on persons for violation of judicial orders concerning the protection of a trade secret or alleged trade secret produced in such proceedings.

3. Each Party may provide in its law circumstances in which the conduct contrary to honest commercial practices is exempted from liability, such as if such conduct is carried out to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by the law of a Party.

ARTICLE 17.50

Protection of data submitted to obtain an authorisation to put a medicinal product²¹ on the market

1. Subject to any conditions set out in the laws and regulations of a Party, 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"), a medicinal product subsequently authorised on the basis of test or other data as defined or protected in its laws and regulations, submitted in the application for the first marketing authorisation shall not be placed on the market without the consent of the holder of the first marketing authorisation.²²

2. Each Party shall protect, in accordance with paragraph 1, test or other data referred to in paragraph 1 against disclosure, except where it is necessary to protect the public or unless steps are taken to ensure that the test or other data are protected against unfair commercial use.

ARTICLE 17.51

²¹ For Australia, a reference in this Article to medicinal product means therapeutic good as provided for in its relevant law.

²² For greater certainty, on the date of entry into force of this Agreement, Australia meets this obligation through section 25A of the *Therapeutic Goods Act 1989* (Cth).

Protection of test data or other data submitted to obtain marketing authorisation for plant protection products²³

1. Subject to any conditions set out in the law of a Party, if a Party requires, as a condition for granting marketing authorisation for a plant protection product, the submission of test data or other data as defined or protected in its laws and regulations, that Party shall not grant the marketing authorisation for another product on the basis of such test or other data without the consent of the person that previously submitted such test or other data. The period of protection shall be for at least 10 years from the date of marketing authorisation of the plant protection product, subject to any conditions set out in the law of a Party.
2. The test data or other data referred to in paragraph 1 should fulfil the following conditions to the extent required by the law of a Party:
 - (a) be necessary for the marketing authorisation or for an amendment of an authorisation in order to allow the use on other crops; and
 - (b) be certified as compliant with principles of good laboratory practice or of good experimental practice.
3. Each Party shall endeavour to avoid duplicative testing on vertebrate animals.

SUB-SECTION 7

PLANT VARIETY RIGHTS

ARTICLE 17.52

New varieties of plants

²³ For Australia, a reference in this Article to plant protection product means agricultural chemical product as provided for in its relevant law.

Each Party shall provide for the protection of new varieties of all plant genera and species in accordance with its rights and obligations under the International Convention for the Protection of New Varieties of Plants (UPOV), adopted in Paris on 2 December 1961, as revised at Geneva on 19 March 1991.

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

ARTICLE 17.53

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 regarding the enforcement of intellectual property rights.²⁴
2. Each Party shall ensure that enforcement procedures as specified in this Section are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. Those procedures shall be proportionate 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.²⁵
3. For the purposes of this Section, each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. Those procedures shall not be

²⁴ For the purposes of this Section, trade secrets (covered by Article 17.49 (Civil judicial procedures and remedies as regards trade secrets) are excluded from the definition of "intellectual property rights".

²⁵ For greater certainty, Article 48(1) of the TRIPS Agreement applies, *mutatis mutandis*, to enforcement procedures covered by this Section.

unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

4. This Section does not create any obligation:

- (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or
- (b) with respect to the distribution of resources between the enforcement of intellectual property rights and the enforcement of law in general.

5. In implementing this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as, where applicable, if provided by the law of the Party, the interests of third parties.

ARTICLE 17.54

Persons entitled to apply for 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 Sections 1 to 4 of Part III of the TRIPS Agreement:

- (a) the holders of intellectual property rights in accordance with the law of the Party;
- (b) persons authorised to use those rights, in particular exclusive licensees, in so far as permitted by and in accordance with the law of the Party; and
- (c) federations and associations,²⁶ to the extent permitted by and in accordance with the law of the Party.

²⁶ The phrase "federations and associations" includes collective rights-management bodies and, in the Union context, professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights.

SUB-SECTION 1

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 17.55

Measures to preserve evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, its judicial authorities have the authority to order, on application by a party who has presented reasonably available evidence sufficient to support their claims that their intellectual property right has been infringed or is about to be infringed, and subject to appropriate safeguards, prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, subject to the protection of confidential information.
2. The measures to preserve evidence referred to in paragraph 1 may include, in appropriate cases, the detailed description, or the physical seizure, or other taking into custody in accordance with the law of the Party, of the alleged infringing goods, the materials and implements used in the production or distribution of these goods and the documentary evidence, relevant to the alleged infringement.
3. In the case of an alleged infringement of an intellectual property right committed on a commercial scale or in other cases subject to the law of a Party, each Party shall ensure that its judicial authorities have the authority to order, where appropriate, the communication of banking, financial or commercial documents under the control of the alleged infringer, subject to the protection of confidential information.
4. Each Party shall ensure that its judicial authorities have the authority to adopt provisional measures to preserve relevant evidence in respect of the alleged infringement of an intellectual property right without the defendant having been heard, where appropriate, in particular if any delay is likely to cause irreparable harm to the right holder, or if there is a demonstrable risk of evidence being destroyed.

5. Each Party shall ensure that its judicial authorities have the authority to require the applicant, with respect to measures to preserve evidence, to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

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

ARTICLE 17.56

Right of information

1. Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall ensure that, in civil judicial proceedings concerning the enforcement of an intellectual property right, its judicial authorities have the authority, upon a justified request of the right holder, to order the infringer or the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in the law of that Party, that the infringer or alleged infringer possesses or controls.

2. The information referred to in paragraph 1 may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of those goods or services and of their channels of distribution.

ARTICLE 17.57

Provisional and precautionary measures

1. Each Party shall ensure that its judicial authorities have the authority to order, at the request of the applicant, prompt and effective provisional measures:

- (a) against the alleged infringer or, where appropriate and subject to each Party's law, a third party,²⁷ over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis, the continuation of the alleged infringement of that right;
- (b) including, if appropriate, the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

2. In the case of an alleged infringement committed on a commercial scale or in other cases subject to a Party's law, a Party shall ensure that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities have the authority to order, subject to the law of that Party, the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets. To that end, the judicial authorities have the authority to order, where appropriate, the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

3. Each Party shall ensure that its judicial authorities have the authority to adopt provisional measures referred to in paragraph 1 and 2 without the defendant having been heard, where appropriate, in particular if any delay is likely to cause irreparable harm to the right holder, or if there is a demonstrable risk of evidence being destroyed.

4. Each Party shall ensure that its judicial authorities have the authority to require the applicant, with respect to provisional measures referred to in paragraphs 1 and 2, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

²⁷ For the purposes of this Article, a Party may provide that a "third party" includes an intermediary.

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

ARTICLE 17.58

Remedies

1. Each Party shall ensure that its judicial authorities have the authority to 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.²⁸ If appropriate, a Party's 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 17.59

Injunctions

Each Party shall ensure that, its judicial authorities have the authority to issue against an infringer of an intellectual property right, as well as, where appropriate and subject to the Party's law, against a

²⁸ In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.

third party²⁹ over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, an injunction aimed at prohibiting or stopping the infringement.³⁰

ARTICLE 17.60

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 17.58 (Remedies) or Article 17.59 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in those Articles, in accordance with each Party's law.

ARTICLE 17.61

Damages

1. Each Party shall ensure that its judicial authorities have the authority to order the infringer, who knowingly or with reasonable grounds to know, engaged in infringing activity, to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.
2. In determining the amount of damages for infringements of intellectual property rights, each Party shall ensure its judicial authorities have the authority to take into account all appropriate aspects for the calculation, both economic and other factors subject to each Party's laws, such as the moral prejudice caused to the right holder, or lost profits suffered by the injured party. A Party may provide in its law presumptions for determining the amount of damages.

²⁹ For the purposes of this Article, a Party may provide that a "third party" includes an intermediary.

³⁰ This Section is without prejudice to Article 44(2) of the TRIPS Agreement.

3. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, a Party may provide 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 17.62

Legal costs

Each Party shall ensure that its judicial authorities have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of intellectual property rights, that the successful party be awarded payment by the unsuccessful party of legal costs and other expenses, which may include appropriate attorney's fees, as provided for under its law.

ARTICLE 17.63

Publication of judicial decisions

In civil judicial proceedings instituted for infringement of an intellectual property right, each Party shall take appropriate measures, in accordance with its law, to publish or make available to the public information on final judicial decisions. Each Party may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising of such decisions.

ARTICLE 17.64

Presumption of authorship or ownership

In civil proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated as the author or related right holder of the work or subject matter in the usual manner is the designated right holder of such work or subject matter, and consequently entitled to institute infringements proceedings.

ARTICLE 17.65

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 out in this Sub-Section.

SUB-SECTION 2

BORDER MEASURES

ARTICLE 17.66

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 a Party's competent authorities to suspend the release of or detain goods suspected of infringing at least trademarks, copyright and related rights, and geographical indications (hereinafter referred to as "suspected goods"). Each Party shall provide that an application to suspend the release of, or to detain, suspected goods, which may apply to multiple shipments, remains in force for at least one year from the date of application, or for the period during which the good is protected by the intellectual property rights referred to in the first sentence, whichever is shorter. If an application to suspend the release of, or to detain, suspected goods remains in force for a period of one year or less, the applicant shall be given an opportunity to apply for an extension of the period to suspend the release or detention of suspected goods. Formalities to extend the period shall not be unnecessarily burdensome.
2. Each Party shall provide that any right holder initiating procedures under paragraph 1 shall be required to provide sufficient information that may reasonably be expected to be within the right

holder's knowledge to make the suspected goods readily recognisable by a Party's competent authorities.³¹ The requirement to provide that information shall not be unnecessarily burdensome.

3. Each Party shall establish or maintain electronic systems for the management by its competent authorities of applications referred to in paragraph 1, that have been granted or recorded.

4. Each Party shall ensure that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of or to detain of suspected goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to those procedures.

5. If a Party's competent authorities have detained or suspended the release of suspected goods, that Party shall ensure that its competent authorities have the authority to inform, subject to a Party's law, without undue delay the right holder, upon the right holder's request, of the names and addresses of the consignor, exporter, consignee or importer,³² a description of the suspected goods, the quantity of the suspected goods, the country of origin, provenance and destination of the suspected goods, provided this information is known to that Party's competent authorities.

6. Each Party shall provide that, if 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 suspected goods, including storage, handling, and any costs relating to the destruction or disposal of the suspected goods.

7. Each Party's competent authorities should grant or record an application within a reasonable period of time.

³¹ For the purposes of this Article, unless otherwise specified, competent authorities may include the appropriate judicial, administrative or law enforcement authorities under a Party's law.

³² For the Union, "importer" means the declarant or the holder of the suspected goods.

8. Each Party shall provide that its competent authorities may act upon their own initiative to suspend the release or detain suspected goods with respect to goods under customs control that are imported or destined for export.
9. Customs authorities shall, when appropriate, apply risk analysis to identify, suspend the release of, or detain, suspected goods, including goods sent in small consignments.
10. 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 an infringement.³³ When suspected goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder and in accordance with the Party's laws.
11. 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.
12. Each Party may decide not to apply this Article to the import of goods put on the market in another country by or with the consent of the right holders.
13. A Party may exclude from the application of this Article goods of a non-commercial nature contained in travellers' personal luggage.
14. The customs authorities of each Party shall, as appropriate, provide for regular engagement on the enforcement of intellectual property rights, with interested parties involved in customs related activities in a Party, including the business community.
15. The Parties agree to cooperate in respect of international trade in suspected goods. In particular, the Parties agree to share, where relevant and appropriate, information on trade in suspected goods affecting a Party.

³³ For the Union, this paragraph applies where the persons concerned agree or do not oppose the destruction of the suspected goods. For Australia, this paragraph applies where the person concerned forfeits the suspected goods.

16. Without prejudice to other forms of cooperation envisaged in this Agreement, the customs authorities of the Parties shall provide each other with mutual administrative assistance in the matters covered by this Sub-Section for which the customs authorities of each Party have responsibility, in accordance with the provisions of Protocol on mutual administrative assistance-in customs matters.

SECTION D

FINAL PROVISIONS

ARTICLE 17.67

Cooperation

1. With a view to facilitating the implementation of this Chapter, the Parties shall endeavour to cooperate within the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property Rights, including Geographical Indications, in international fora, via various agencies or as otherwise deemed appropriate.
2. The areas of cooperation may include:
 - (a) exchange on developments in domestic and international intellectual property law and policy;
 - (b) exchange on intellectual property administration and registration systems;
 - (c) education and promotion of awareness relating to the protection and enforcement of intellectual property, including relating to the impact of intellectual property rights infringement;
 - (d) engagement with SMEs regarding the use, protection and enforcement of intellectual property rights;
 - (e) exchange of information and experience in intellectual property issues relevant to:

- (i) SMEs;
 - (ii) science, technology and innovation activities; and
 - (iii) the generation, transfer and dissemination of technology;
- (f) exchange on policies involving the use of intellectual property for research, innovation and economic growth;
- (g) the implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of the WIPO;
- (h) technical assistance for developing countries;
- (i) exchange on best practices, projects and programmes aimed at reducing intellectual property rights infringements, including:
- (i) supporting the use of adequate tools and new technologies to prevent and detect counterfeiting activities;
 - (ii) sharing of experience on enforcement of intellectual property rights by law enforcement authorities, administrative and judicial bodies; and
 - (iii) voluntary stakeholders initiatives to reduce intellectual property infringements, including over the internet; and
- (j) improving the international intellectual property regulatory framework.

ARTICLE 17.68

Voluntary stakeholder initiatives

Each Party shall endeavour to promote cooperative efforts within the business community to effectively address intellectual property infringement, including in the digital environment, while preserving legitimate competition. This may include encouraging the establishment of public or private advisory groups, or other possible initiatives, to address issues of intellectual property infringement.

ARTICLE 17.69

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

1. The Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property Rights, including Geographical Indications is established pursuant to Article 22.5(1) (Specialised committees).
2. In addition to the functions specified in Article 22.6 (Functions of the specialised committees), the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property Rights, including Geographical Indications shall have the following functions:
 - (a) provide a forum for exchanging information on geographical indications for the purposes of considering their protection in accordance with Article 17.41 (Protection of geographical indications);
 - (b) further to Article 17.41(2) (Protection of geographical indications), deal with any matter arising from product specifications of protected geographical indications of the other Party listed in Annex 17 (Lists of geographical indications);
 - (c) recommend to the Trade Committee to amend Annex 17 (Lists of geographical indications), in accordance with Article 17.40 (Amendment of the list of geographical indications), including removal of geographical indications where they cease to be protected in the territory of the Party concerned; and
 - (d) 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.