

SUB-SECTION 6 - PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE 17.48 - 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 conduct shall be considered contrary to honest commercial practices:
 - (a) the acquisition of a trade secret without the consent of the trade secret holder, obtained 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) the acquisition, use or disclosure by a person who knew or ought, under the circumstances, to have known¹ that the trade secret had been obtained from another person who was using or disclosing the trade secret unlawfully.

¹ For the purposes of this Article, "ought to have known" may be interpreted as "was grossly negligent in failing to know".

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 a judicial decision in which the passages containing trade secrets have been removed or redacted; and
 - (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 product¹ 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

¹ For Australia, a reference in this Article to medicinal product means therapeutic good as provided for in its relevant law.

the market without the consent of the holder of the first marketing authorisation.¹

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 - Protection of test data or other data submitted to obtain marketing authorisation for plant protection products²

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 the first 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 the principles of good laboratory practice or of good experimental practice.
3. Each Party shall endeavour to avoid duplicative testing on vertebrate animals.

¹ 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).

² For Australia, a reference in this Article to plant protection product means agricultural chemical product as provided for in its relevant law.