

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 to 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.¹ 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, 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,² 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 the customs authorities, from the moment of detention or

¹ 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.

² For the Union, "importer" means the declarant or the holder of the suspected goods.

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.

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. Each Party shall provide that its 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.¹ If 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. Each Party shall ensure that its customs authorities, 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 shall cooperate in respect of international trade in suspected goods. In particular, the Parties shall share, where relevant and appropriate, information on trade in suspected goods affecting a Party.

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

¹ 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.

provisions of the Protocol on mutual administrative assistance in customs matters.