

ANNEX XIII

REFERRED TO IN ARTICLE 5.1

PROTECTION OF INTELLECTUAL PROPERTY

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TITLE I

GENERAL PROVISIONS

Article 1

Definition of Intellectual Property

For the purposes of the Agreement, “intellectual property” comprises in particular copyright, including the protection of computer programmes and compilations of data, as well as neighbouring rights, trademarks for goods and services, geographical indications for goods, including appellations of origin for goods and indications of source for services, industrial designs, patents, plant varieties, topographies of integrated circuits, as well as undisclosed information.

Article 2

International Conventions

1. The Parties reaffirm their obligations set out in the following multilateral agreements:
 - (a) the TRIPS Agreement;
 - (b) the Paris Convention of 20 March 1883 for the Protection of Industrial Property, as revised by the Stockholm Act of 1967 (hereinafter referred to as “the Paris Convention”);
 - (c) the Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works, as revised by the Paris Act of 1971;
 - (d) the International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations;
 - (e) the Patent Cooperation Treaty of 19 June 1970, as revised by the Washington Act of 2001;
 - (f) the Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;

- (g) the Nice Agreement of 15 June 1957 Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks as revised by the Geneva Act of 1979; and
- (h) the Protocol of 27 June 1989 Relating to the Madrid Agreement concerning the International Registration of Marks.

2. The Parties, which are not parties to one or more of the agreements listed in this paragraph shall ratify or accede to them before 31 December 2011.

- (a) the Geneva Act of 1999 of the Hague Agreement Concerning the International Registration of Industrial Designs;
- (b) the WIPO Performances and Phonogram Treaty of 20 December 1996;
- (c) the WIPO Copyright Treaty of 20 December 1996; and
- (d) the International Convention for the Protection of New Varieties of Plants 1978 (hereinafter referred to as “1978 UPOV Convention”), or the International Convention for the Protection of New Varieties of Plants 1991 (hereinafter referred to as “1991 UPOV Convention”).

3. The Parties agree to promptly hold expert meetings, upon request of any Party, on activities relating to the conventions referred to in this Article or to future international conventions on harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations, such as the WTO and the World Intellectual Property Organization (hereinafter referred to as “WIPO”), as well as on relations of the Parties with third countries on matters concerning intellectual property.

TITLE II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

Article 3

Trademarks

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including combinations of words, personal names, letters, numerals, figurative elements, shapes of goods, sounds and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, the Parties

may make registrability depend on distinctiveness acquired through use. Parties may require, as a condition of registration, that signs be visually perceptible.

2. The Parties reaffirm the importance of, and shall be guided by the principles contained in, the *WIPO 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 the WIPO in 1999, and the *WIPO Joint Recommendation Concerning Provisions on the Protection of Marks and other Industrial Property Rights in Signs, on the Internet*, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 2001.

Article 4

Patents

The Parties shall ensure in their national laws at least the following:

- (a) adequate and effective patent protection for inventions in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.

For the Parties to the Agreement this means protection on a level corresponding to the one in Article 27.1 of the TRIPS Agreement. In addition to what is provided for in Article 27.2 of the TRIPS Agreement, the Parties may exclude from patentability:

- (i) any invention of a method for treatment of the human or animal body by surgery or therapy or for diagnostic methods practised on the human or animal body; this Provision shall not apply to products, in particular substances or compositions, for use in any of these methods;
 - (ii) plant or animal varieties or essentially biological processes for the production of plants or animals; this Provision shall not apply to microbiological processes or the products thereof.
- (b) a compensatory term of protection for pharmaceuticals and plant protection products, which shall be calculated from the expiry of the maximum term of patent of 20 years for a period equal to the period which elapsed between the filing date of the patent application and the date of the market authorisation of the product, reduced by a period of five years. Such compensatory protection shall cover a period of five years at the most¹ and shall be granted under the following conditions:

¹ For pharmaceuticals that have been tested for paediatric use, a six months extension of the compensatory term of protection may be granted according to the national law of a Party.

- (i) the product is protected by a patent in force;
- (ii) there has been an official marketing authorisation for the medicinal or plant protection product;
- (iii) the right conferred by the patent has been postponed by administrative procedures regarding authorisation of market access, so that the effective use of the patent amounts to less than 15 years; and
- (iv) the effective protection conferred by the patent and the compensatory protection shall together not exceed 15 years².

Article 5

Undisclosed Information

1. The Parties shall protect undisclosed information in accordance with Article 39 of the TRIPS Agreement.
2. The Parties shall prevent applicants for marketing authorisation for pharmaceuticals and agricultural chemical products from relying on, or referring to, undisclosed test data or other data submitted to the competent authority by the first applicant for a period, counted from the date of marketing authorisation, of at least five years for pharmaceuticals and at least ten years for agrochemical products.
3. Without prejudice to paragraph 2, the Parties shall in any case not accept an application making reference to undisclosed test data or other data submitted to the competent authority by the first applicant for a period of at least three years, counted from the date of marketing authorisation. This exception from paragraph 2 shall only be applicable to pharmaceuticals.
4. For at least five years from the initial authorisation of the reference product, no marketing authorisation shall be granted for a generic pharmaceutical.
5. Parties that do not grant a longer protection period for undisclosed test data of pharmaceuticals than referred to in paragraph 2, shall extend the protection period to at least six years if, during the first three years, counted from the date of marketing authorisation, the marketing authorisation holder obtains an authorisation for one or more new therapeutic indications which, during the scientific evaluation prior to their authorisation, are held to bring a significant clinical benefit in comparison with existing therapies.

² For pharmaceuticals that have been tested for paediatric use, a six months extension of the compensatory term of protection may be granted according to the national law of a Party.

6. Reliance on or reference to such data may be permitted:
 - (a) where authorisation is sought for re-imported products that have already been approved before exportation; and
 - (b) in order to avoid unnecessary duplication of tests of agrochemical products involving vertebrate animals, provided that the first applicant is adequately compensated.
7. The protection period for test data as regards pharmaceuticals provided for in this Article shall be increased towards or to the level of European protection, in the case that Ukraine introduces such a level in its national legislation or in an international agreement with a third party. The increase shall take effect from the same time as national legislation or an international agreement containing such an extension of the protection period enters into force.³

Article 6

Industrial Designs

The Parties shall ensure in their national laws adequate and effective protection of registered industrial designs by providing in particular a period of protection of at least 25 years in total. The Parties may provide for a shorter period of protection for designs of component parts used for the purpose of the repair of a product.

Article 7

Geographical Indications

1. The Parties shall ensure in their national laws adequate and effective means to protect geographical indications with regard to all goods.⁴
2. For the purposes of the Agreement, “geographical indications” are indications, which identify goods as originating in the territory of a Party, or a region or a locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to their geographical origin.
3. Without prejudice to Article 23 of the TRIPS Agreement the Parties shall provide the legal means for interested parties to prevent the use of a geographical indication for goods not originating in the place indicated by the designation in question in a manner which misleads the public as to the geographical origin of those goods or

³ The increased protection shall also apply to pharmaceuticals that have obtained marketing authorisation up to three years before the increased protection enters into force.

⁴ Nothing in this Article shall require Ukraine to prevent continued and similar use of a particular geographical indication identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of Ukraine either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

4. The Parties shall provide the legal means for interested parties to prevent the use of a geographical indication for agricultural products and foodstuffs for identical or comparable products not originating in the place indicated by the designation in question.

Article 7*bis*

Indications of Source and Country Names

1. The Parties shall ensure in their national laws adequate and effective means to protect indications of source, names and flags of countries, with regard to all goods and services.

2. Indications of source are direct or indirect references to the geographical origin of goods or services. Nothing in the Agreement shall require a Party to amend its legislation if, at the date of entry into force of the Agreement, it limits in its national law the protection of indications of source to cases where a given quality, reputation or other characteristic of goods or services is essentially attributable to their geographical origin.

3. The Parties shall provide the legal means for interested parties to prevent the use of an indication of source for goods not originating in the place indicated by the designation in question in a manner which misleads the public as to the geographical origin of those goods or which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

4. The Parties shall provide the legal means for interested parties to prevent the use of an indication of source for services, including but not limited to cases where such indication is used as a trademark, trade name or company name, in a manner which misleads the public as to the geographical origin or constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

5. The Parties shall prevent any incorrect or misleading use or registration of country names of a Party, as trademarks, company names or names of associations or as any other protected title.

6. The Parties shall prevent that armorial bearings, flags and other State or regional emblems of a Party are used or registered, including but not limited to, as trademarks or designs, in non-compliance with the conditions laid down in the laws and regulations of the relevant Party. This protection shall also apply to signs that may be confused with armorial bearings, flags and other State or regional emblems of the Parties.

TITLE III

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

Article 8

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the Parties shall ensure that the procedures for granting or registration are of the same level as that provided in the TRIPS Agreement, in particular Article 62.

TITLE IV

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Article 9

General

The Parties shall provide in their respective national laws for enforcement provisions for rights covered by Article 1 that shall be of the same level as that provided in the TRIPS Agreement, in particular Articles 41 to 61.

Article 10

Suspension of Release

1. The Parties shall adopt procedures to enable a right holder, who has valid grounds for suspecting that importation or exportation of goods infringing intellectual property rights may take place, to lodge an application in writing with the competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods.

2. It is understood that there shall be no obligation to apply procedures set forth in paragraph 1 to the suspension of the release into free circulation of goods put on the market in another country by or with the consent of the right holder.

Article 11

Right of Inspection

1. The competent authorities shall give the applicant for the suspension of goods and other persons involved in the suspension the opportunity to inspect goods whose release has been suspended or which have been detained.
2. When examining goods, the competent authorities may take samples and, according to the rules in force in the Party concerned, hand them over or send them to the right holder, at their expressed request, strictly for the purposes of analysis and of facilitating the subsequent procedure. Where circumstances allow, samples must be returned upon completion of the technical analysis and, where applicable, before goods are released or their detention is lifted. Any analysis of these samples shall be carried out under the sole responsibility of the right holder.

Article 12

Liability Declaration, Security or Equivalent Assurance

The competent authorities shall have the authority to require an applicant to declare to accept liability towards the persons involved and, in justified cases, to provide a security or equivalent assurance, sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 13

Cooperation in the Field of Intellectual Property

The Parties, recognising the growing importance of intellectual property rights as a factor of social, economic and cultural development, shall enhance their cooperation in the field of intellectual property rights.
