

ANNEX XII

REFERRED TO IN ARTICLE 46

INTELLECTUAL PROPERTY RIGHTS

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Article 1

Intellectual property

"Intellectual property" comprises in particular copyright, including computer programmes and databases¹, as well as related rights, trademarks for goods and services, geographical indications including appellations of origin for goods, industrial designs, patents, lay-out designs (topographies) of integrated circuits, as well as protection of undisclosed information. The protection of plant varieties is also covered by this Agreement.

Article 2

International conventions

1. The Parties reaffirm their obligations set out in the following multilateral agreements:

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994);
- Paris Convention of 20 March 1883 for the Protection of Industrial Property (Stockholm Act, 1967);
- Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works (Paris Act, 1971); and
- International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention).

2. The Parties which are not parties to one or more of the agreements listed below shall undertake to become a party to the following multilateral agreements before 1 January 2007:

- World Intellectual Property Organization Copyright Treaty (Geneva 1996);

¹ Databases are understood to be compilations of data or other material, whether in machine readable or other form, which by reason of selection or arrangement of their contents constitute intellectual creations.

- World Intellectual Property Organization Performances and Phonogram Treaty (Geneva 1996);
- Patent Cooperation Treaty of 19 June 1970 (Washington Act, amended in 1979 and modified in 1984);
- Nice Agreement of 15 June 1957 Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Geneva Act 1977 amended in 1979); and
- International Convention for the Protection of New Varieties of Plants 1978 ("1978 UPOV Convention"), or the International Convention for the Protection of New Varieties of Plants 1991 ("1991 UPOV Convention").

3. The Parties which are not parties to the agreement listed below shall undertake to become a party to the following multilateral agreement before 1 January 2009:

- Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

4. The Parties shall make every effort to accede to and ensure an adequate and effective implementation of the obligations arising from the following multilateral conventions at the earliest possible opportunity in conformity with their legal and constitutional norms:

- Protocol of 27 June 1989 Relating to the Madrid Agreement concerning the International Registration of Marks; and
- Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs.

5. The Parties agree to promptly hold expert meetings, upon request of any Party, on activities relating to the identified or to future international conventions on harmonization, administration and enforcement of intellectual property rights and on activities in international organizations, such as the WTO and the World Intellectual Property Organization (WIPO), as well as relations of the Parties with third countries on matters concerning intellectual property.

Article 3

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. For Liechtenstein and Switzerland this means protection on a level corresponding to the one in the European Patent Convention of 5 October 1973, as implemented in national law. For Iceland and Norway this means protection on a level corresponding to the one in

the Agreement on the European Economic Area of 2 May 1992, as implemented in national law. For Chile this means patent protection for any invention, whether a product or process, in accordance with the TRIPS Agreement in particular Article 27, as implemented in national law;

- (b) each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval or sanitary permit process; and
- (c) compulsory licensing of patents shall only be granted under the terms of the TRIPS Agreement and the Doha Ministerial Declaration adopted on 14 November 2001 by the World Trade Organization.

Article 4

Undisclosed information

1. Each Party, when requiring, as a condition for granting a marketing approval or a sanitary permit of pharmaceutical or of agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

2. Each Party shall not permit third persons not having the consent of the person providing the information to market a product based on this new chemical entity, on the basis of the approval granted to the person submitting such information for a period of at least five years from the date of approval for a pharmaceutical product and ten years from the date of approval for an agricultural chemical product.²

Article 5

Designs

The Parties, in conformity with their legal and constitutional norms, shall make every effort to ensure in their national laws adequate and effective protection of industrial designs by providing, in particular, a period of protection of at least fifteen years in total from the date of application. 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.

² It is understood that the Parties may, in cases where the products for which the marketing approval or sanitary permit is requested were produced by the submitter of the undisclosed data or with his consent, allow the applicant to rely on that data.

Article 6

Geographical indications

The Parties shall ensure in their national laws adequate and effective means to protect geographical indications, including appellations of origin, with regard to all goods in accordance with Articles 22 and 24 of the TRIPS Agreement and with regard to wines and spirits in accordance with Articles 22, 23 and 24 of the TRIPS Agreement.

Article 7

Acquisition and maintenance of intellectual property rights

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 grant or registration are of the same level as that provided in the TRIPS Agreement, in particular Article 62.

Article 8

Enforcement of intellectual property rights

The Parties shall provide for enforcement provisions under their national laws of the same level as that provided in the TRIPS Agreement, in particular Articles 41 to 61.
