

ANNEX VI

REFERRED TO IN ARTICLE 23

PROTECTION OF INTELLECTUAL PROPERTY

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SECTION I

GENERAL PROVISIONS

Article 1

Definition of Intellectual Property

For the purposes of the Agreement, “intellectual property” comprises in particular copyrights, including the protection of computer programmes and compilations of data, as well as related rights, trademarks for goods and services, geographical indications, including appellations of origin for goods and indications of source for goods and 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) 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”);
- (b) Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works, as revised by the Paris Act of 1971 (hereinafter referred to as the “Berne Convention”);
- (c) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the “Rome Convention”);
- (d) Patent Cooperation Treaty of 19 June 1970, as revised by the Washington Act of 2001;
- (e) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;

- (f) Nice Agreement of 25 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
 - (g) Protocol of 27 June 1989 relating to the Madrid Agreement concerning the International Registration of Marks.
2. The Parties shall comply with the substantive provisions set out in the TRIPS Agreement.
3. The Parties shall ratify or accede to the following agreements before 31 December 2012, provided they are not parties to them yet:
- (a) Geneva Act of 1999 of the Hague Agreement Concerning the International Registration of Industrial Designs;
 - (b) World Intellectual Property Organisation (hereinafter referred to as “WIPO”) Copyright Treaty of 20 December 1996;
 - (c) WIPO Performances and Phonogram Treaty of 20 December 1996 (hereinafter referred to as the “WPPT”); and
 - (d) International Convention for the Protection of New Varieties of Plants 1991, unless the Party concerned is already a member of the International Convention for the Protection of New Varieties of Plants 1978, and chose not to accede to the 1991 Act.
4. 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 WIPO, as well as on relations of the Parties with non-Parties on matters concerning intellectual property.

SECTION II

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

Article 3

Copyright and Related Rights

1. Without prejudice to the obligations set out in the international agreements to which the Parties are parties, each Party shall, in accordance with its laws and regulations, grant and ensure adequate and effective protection to the authors of works

and to performers, producers of phonograms and videograms and broadcasting organisations for their works, performances, phonograms, videograms and broadcasts, respectively.

2. In addition to the protection provided for in paragraph 1, each Party shall grant and ensure protection as provided for in Articles 5, 6, 7, 8 and 10 of the WPPT, *mutatis mutandis*, to performers for their audiovisual and visual performances.

3. Each Party shall ensure that a broadcasting organisation in its territory has at least the exclusive right of authorising the following acts: the fixation, the reproduction and the distribution of fixations, the rebroadcasting by wireless means of broadcasts, and the making available to the public of its broadcasts 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.

4. Each Party may, in its national law, provide for the same kinds of limitations or exceptions as in Article 16 of the WPPT with regard to the protection of performers for their aural, visual and audiovisual performances and to the protection of broadcasting organisations, to the extent that such limitations and exceptions are compatible with the Rome Convention.

5. Each Party shall ensure that the author has the right, independently of the author's economic rights, and even after the transfer of these rights, to claim authorship of the work and to object to any modification, distortion, mutilation or other derogatory action in relation to the said work, which would be prejudicial to his or her honour or reputation.

6. The rights granted to the author in accordance with paragraph 5 shall, after his or her death, be maintained at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the law of the Party in which protection is claimed.

7. The rights granted under paragraphs 5 and 6 shall be granted, *mutatis mutandis*, to performers as regards their live aural, visual or audiovisual performances, or performances fixed in phonograms or audiovisual fixations.

8. The general term of protection granted for works shall be the life of the author and 70 years after his or her death. For computer programmes, the term of protection shall be at least the life of the author and 50 years after his or her death.

9. The term of protection for related rights covered by the Agreement, as well as for other works for which the term of protection of a work is calculated on a basis other than the life of a natural person, shall be no less than 50 years after the authorised publication, or, failing such authorised publication within 50 years from the making of the work, 50 years from the making.

10. A Party may be exempted from its obligations under paragraphs 8 and 9 where the exemptions provided for in Articles 7 and 7*bis* of the Berne Convention apply.

Article 4

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. The 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 5

Patents

Each Party shall ensure in its national law at least the following:

- (a) adequate and effective patent protection for inventions in all fields of technology, in accordance with the level of protection provided in the Convention on the Grant of European Patents; and
- (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:
 - (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;

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

- (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 6

Undisclosed Information

1. The Parties, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilise chemical or biological 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, the Parties 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 from unfair commercial use.

2. The Parties shall prevent applicants for marketing approval 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 approval, of at least eight years for pharmaceutical products and at least ten years for agrochemical products. In addition, for pharmaceutical products, the Parties shall ensure that no pharmaceutical product relying on, or referring to, undisclosed test data or other data submitted to the competent authority by the first applicant is placed on the market until ten years have elapsed from the date of marketing approval for the first applicant.

3. The ten year period referred to in paragraph 2 shall be extended to a minimum of eleven years if, at least during the first eight years of those ten years, 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.

4. Reliance on or reference to such data may be permitted in order to avoid unnecessary duplication of tests of agrochemical products involving vertebrate animals, provided that the first applicant is adequately compensated.

Article 7

Industrial Designs

The Parties shall ensure in their national laws adequate and effective protection of industrial designs by providing in particular a period of protection of at least 25 years

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

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 8

Geographical Indications and Indications of Source

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

2. For the purposes of the Agreement, “geographical indications” means indications, which identify goods as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of those goods is essentially attributable to their geographical origin.

3. 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 law if, at the date of entry into force of the Agreement, in its national law, it limits 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.

4. 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 or 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.

5. 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.

6. The Parties shall provide the legal means for interested parties to prevent the use of an indication of source for services, in a manner which misleads the public as to the true place of origin or constitutes an act of unfair competition.

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

8. The Parties shall prevent that armorial bearings, flags and other State or regional emblems of a Party are used or registered as trademarks, designs or as any other protected titles, such as company names or names of associations, in non-compliance with the conditions laid down in the laws and regulations of that 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.

SECTION III

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

Article 9

Acquisition and Maintenance

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 at least of the same level as that provided in the TRIPS Agreement, in particular in Article 62.

SECTION IV

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Article 10

General

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

Article 11

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. The Parties shall enable their competent authorities to act upon their own initiative and suspend the release of goods when they have valid grounds for suspecting that importation or exportation of those goods would infringe intellectual property rights.
3. The Parties authorise their customs authorities to inform the right holder for the right holder to be able to lodge an application referred to in paragraph 1.

4. It is understood that there shall be no obligation to apply procedures set forth in paragraphs 1 or 2 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.

5. In case of suspension pursuant to paragraphs 1 or 2 with respect to importation into or exportation from the customs territory of a Party, the competent authorities of the Party suspending the release of the products shall notify the right holder of the suspension including necessary information to enforce his or her rights, such as the name and addresses of the consignor or consignee, and the importer or exporter, as applicable, and the quantity of the products in question.

6. Each Party shall ensure that the competent authorities, administrative or judicial, on request from the right holder, have the authority to decide that the products, the release of which has been suspended pursuant to paragraphs 1 or 2, shall be held seized until a final decision is reached in the infringement dispute. The Parties shall ensure that the competent judicial authorities in an infringement dispute may order, at the request of the right holder, that appropriate measures be taken with regard to goods that they have found to be infringing an intellectual property right and, in appropriate cases, with regard to materials and implements predominantly used in the creation or manufacture of those goods. Such measures shall include definitive removal from the channels of commerce or destruction. In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

7. Each Party shall provide that if the competent authorities have made a determination that the suspected goods infringe an intellectual property right, procedures are made available to enable the right holder to seek recovery of, and indemnify against, costs and expenses that the right holder may have incurred in connection with the exercise of rights and remedies provided in this Article.

Article 12

Injunctions

1. Each Party shall ensure that, where a judicial decision is taken finding either an infringement or an imminent threat of an infringement of an intellectual property right, the judicial authority may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement.

2. Non-compliance with an injunction shall, where appropriate, be subject to civil or criminal sanctions, with a view to ensuring compliance.

Article 13

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 his or her express request, strictly for the purposes of analysis and of facilitating the subsequent procedure. Where circumstances allow, samples must be returned on 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.
3. The declarant, holder or owner of the goods may request to be present at the inspection with a view to protecting their trade secret.

Article 14

Civil Remedies

Each Party shall provide that:

- (a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer, who knowingly or with reasonable grounds to know engaged in infringing activity of intellectual property rights, to pay the right holder damages adequate to compensate for the actual injury the right holder has suffered as a result of the infringement;
- (b) in determining the amount of damages for intellectual property rights infringement, its judicial authorities shall consider, *inter alia*, the actual damage, or establishing a fair licence fee.

Article 15

Criminal Remedies

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale.

Article 16

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 17

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, agree to enhance their cooperation in the field of intellectual property rights.
