

ANNEX 8.A
PROTECTION OF INTELLECTUAL PROPERTY

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SECTION A
GENERAL PROVISIONS

Article 1
Scope

For the purposes of the Agreement, protection of intellectual property has as its object copyright and related rights, trademarks for goods and services, geographical indications, indications of source, industrial designs, patents, plant varieties, as well as undisclosed information.

Article 2
International Conventions

1. Each Party affirms its obligations set out in the following multilateral agreements:
 - (a) TRIPS Agreement;
 - (b) the *Paris Convention for the Protection of Industrial Property*, done at Paris on 20 March 1883, as revised by the Stockholm Act on 14 July 1967 (hereinafter referred to as the “Paris Convention”);
 - (c) the *Berne Convention for the Protection of Literary and Artistic Works*, done at Berne on 9 September 1886, as revised by the Paris Act on 24 July 1971;
 - (d) the *Patent Cooperation Treaty done at Washington on 19 June 1970*, as revised by the Washington Act on 3 October 2001;
 - (e) the *Protocol Relating to the Madrid Agreement concerning the International Registration of Marks*, done at Madrid on 27 June 1989;
 - (f) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*, done at Budapest on 28 April 1977;
 - (g) the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled*, done at Marrakesh on 27 June 2013; and
 - (h) the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done

at Nice on 15 June 1957, as revised by the Geneva Act, on 28 September 1979.

2. Each Party shall, provided that it is not yet a party, ratify or accede to the following multilateral agreements within 2 years of entry into force of the Agreement, or comply with their substantive provisions by the same date:
 - (a) *World Intellectual Property Organisation* (hereinafter referred to as “WIPO”) *Copyright Treaty*, done at Geneva on 20 December 1996; and
 - (b) *WIPO Performances and Phonogram Treaty*, done at Geneva on 20 December 1996.
3. Each Party shall, provided that it is not yet a party, give due consideration to ratify or accede to the following multilateral agreements:
 - (a) *Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs*, done at Geneva on 2 July 1999;
 - (b) *Beijing Treaty on Audio-Visual Performances*, done at Beijing on 24 June 2012.
4. With a view to deepening the relationship on intellectual property matters, the Parties agree to 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 intellectual property rights and on activities in international organisations, such as the WTO and the WIPO.

Article 3 ***TRIPS Agreement and Public Health***

1. The provisions of Chapter 8 (Intellectual Property) and the provisions of this Annex shall be without prejudice to the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Amendment of the TRIPS Agreement as adopted by the WTO General Council on 6 December 2005.
2. Each Party recognises the importance of implementing Article 31*bis* of the TRIPS Agreement and the annex and appendix to the annex to the TRIPS Agreement.

Article 4 ***Genetic Resources and Traditional Knowledge Associated with Genetic Resources***

1. The Parties affirm the importance of the work carried out by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore as well as work in the framework of other

international fora¹, dealing with genetic resources and traditional knowledge associated with genetic resources.

2. If an international instrument on intellectual property, genetic resources and traditional knowledge associated with genetic resources is adopted by WIPO, the Parties shall:
 - (a) conduct consultations under this Article;
 - (b) enter into such consultations as soon as reasonably practicable and, in any event, no later than two years from entry into force of such an international instrument for the Parties;
 - (c) review this Article with a view to decide whether to amend it in accordance with the international instrument.

SECTION B

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

Article 5 *Copyright and Related Rights*

1. Notwithstanding the rights and obligations set out in the international agreements to which it is a party, each Party shall, in accordance with its domestic law, grant adequate and effective protection to authors, performers, producers and broadcasting organisations for their works,² performances, phonograms, audiovisual fixations,³ and broadcasts respectively.
2. A Party may provide limitations or exceptions in its domestic law to the rights provided under paragraph 1, but shall confine such limitations or exceptions to certain special cases that do not conflict with a normal exploitation of the works, performances, phonograms, audiovisual fixations, and broadcasts and do not unreasonably prejudice the legitimate interests of a right holder.
3. Each Party shall promote, where appropriate, the establishment of bodies for the collective management of copyright and related rights and encourage such bodies to operate in a manner that is fair, efficient, publicly transparent, and accountable to their members, including open and transparent record keeping of the collection and distribution of revenues. Each Party shall also encourage the establishment of reciprocal arrangements between their respective collecting societies for the purposes of ensuring easier licensing of content and sharing of rights revenues.

¹ Such as the *Convention on Biological Diversity* done at Rio De Janeiro on 5 June 1992 and other relevant international fora.

² For greater certainty, the term “works” includes computer programmes and compilations of data.

³ For India, “audiovisual fixations” mean cinematograph films under this Article.

Article 6

Trademarks

1. Each Party 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, a Party may make registrability depend on distinctiveness acquired through use. A Party may require, as a condition of registration, that signs be capable of being represented graphically or represented in a register in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.
2. Each Party shall provide, in accordance with the requirements of its domestic laws and regulations, for an opportunity to oppose a trademark application, communication of a written and reasoned order to the applicant, and an appeal procedure to a competent authority against a refusal order. Each Party shall endeavour to make publicly available the database of trademark applications and registrations.
3. No Party shall provide registration of trademarks if it is of such a nature as to deceive the public or cause confusion or if it is misleading. This may, include, in accordance with the provisions of its domestic laws and regulations, situations consisting of marks, or indications that may serve to designate the geographical origin of the goods or services such as the name of the country, well-known cities or territorial name of a Party.

Article 7

Well-Known Trademarks

1. Each Party shall provide protection for well-known trademarks in accordance with its domestic law.
2. The protection of well-known trademarks shall not be limited to identical or similar goods or services in situations where the trademark, whether registered or not, is well known in the relevant Party and where the use of the trademark without due cause would be detrimental to the distinctive character or repute of the earlier trademark, or take unfair advantage of the earlier trademark.
3. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General

Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO, 20 to 29 September 1999.

Article 8
Indications of source, country names, and state emblems

1. Each Party shall provide the legal means to protect indications of source against any act of competition that is contrary to honest practices in industrial or commercial matters, in accordance with Article 10bis of the Paris Convention.
2. Each Party shall provide legal means for interested persons to prevent commercial use of a country name of a Party or of its territory names in relation to a good or service in a manner that misleads consumers to the origin of the good or service.
3. Each Party shall provide the legal means for interested persons to prevent the registration of country names of a Party or of its territory names as trademarks, if the use of such trademarks misleads the public as to the true place of origin. This provision applies even if the geographical name is translated or used as an adjective or in a modified form if such use misleads the public as to the true place of origin of the good or service.
4. Each Party shall provide, in accordance with its obligations under Article 6ter of the Paris Convention, that armorial bearings, flags and other State emblems of the other Party shall not be used or registered as trademarks or as elements of trademarks. This paragraph shall also apply to signs that may be confused with armorial bearings, flags and other State emblems of the Parties.
5. In addition to this Article, Appendix 8.A.1 (Country Names) applies to India and Switzerland.

Article 9
Geographical Indications

1. Each Party affirms the importance of geographical indications, which contribute to preserving traditional methods of production and cultural heritage associated with it from a particular geographical area and to sustainable regional development.
2. Each Party shall provide adequate and effective means to protect geographical indications in its domestic law.
3. For the purposes of the Agreement, **“geographical indications”**⁴ are indications, which identify goods as originating in the territory of a Party, or a

⁴ Appellations of origin are a sub-category of geographical indications in Parties that recognise appellations of origin. Where a Party provides for appellations of origin, a geographical indication that fulfills the requirements for registration as an appellation of origin may be protected as appellation of origin.

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. In this context, “**goods**” refers to agricultural goods, natural goods, manufactured goods, goods of handicraft or industry and foodstuff.

4. Without prejudice to Article 23 of the TRIPS Agreement, each Party shall provide the legal means for interested parties to prevent the use of a geographical indication for:
 - (a) goods not originating in the place indicated by the designation in question, in a manner that misleads the public as to the geographical origin of the goods;
 - (b) a good of the same kind as the one to which the geographical indication refers, not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like.⁵
5. Where a Party does not provide the protection under subparagraph 4(b) to all goods or classes of goods, but rather to certain goods or classes of goods on a case-by-case basis, it shall extend such protection to such goods or classes of goods as requested by the other Party, in accordance with its domestic laws and regulations. Upon such extension, an interested party, in order to obtain such protection, shall submit a request to the competent authority.

Article 10 ***Protection of Specific Geographical Indications under the Agreement***⁶

1. Upon request from a Party, the Parties shall enter into consultations with a view to protecting under the Agreement specific geographical indications from each of the Parties, taking also into account any relevant legislative developments in the Parties.
2. Consultations under paragraph 1 shall be undertaken through the Joint Committee established under Article 11.1 of the Agreement.
3. Consultations under paragraph 1 shall commence as soon as reasonably practicable after a request has been received from a Party and, in any event, no later than two years after the request is received.

⁵ For Norway, the scope of subparagraph 4(b) shall be limited to agricultural goods and foodstuff.

⁶ For the purposes of this Article, the Parties, or a Party, means India on the one side and Switzerland and Liechtenstein on the other side.

Article 11
Patents

1. In accordance with Article 27 of the TRIPS Agreement, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided they are new, involve an inventive step and are capable of industrial application. Patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.
2. Each Party may exclude from patentability
 - (a) diagnostic, therapeutic and surgical methods for treatment of humans or animals;
 - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.
3. Each Party may also exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their domestic law.
4. Each Party shall provide a patent applicant with the opportunity to make amendments, corrections, and observations in connection with its application filed before the competent authority of the Party, in accordance with their domestic laws and regulations.
5. Recognising the benefits of transparency in the patent system, each Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the priority date. If a pending patent application is not published promptly, each Party shall publish such application or the corresponding patent as soon as practicable.
6. Each Party shall provide that a patent applicant may request the early publication of an application prior to the expiration of the period mentioned in paragraph 4.
7. Where a Party provides for a process that allows a third party to oppose a patent application prior to its grant, it shall ensure that this opposed patent application is processed and disposed of within a reasonable period of time and without undue delay including by swiftly rejecting *prima facie* unfounded oppositions, as determined by the competent authority.

Article 12
Working of a Patent

1. No Party shall require patent owners to provide annual disclosures of information concerning the working of a patent. Where a Party does provide for periodic disclosure of information concerning the working of a patent, the periodicity shall not be less than 3 years and confidential information, including information of commercial value, contained in such disclosure may not be published.
2. Without prejudice to paragraph 1, a Party may require a patent owner to provide information concerning the working of a patent, in a given case, in accordance with its domestic laws and regulations.
3. With respect to the working of a patent, a patented invention may not be considered as 'not worked' within the territory of a Party merely because the product resulting from the invention was imported.

Article 13
Conditions on Patent Applicants

1. Each Party shall require a patent applicant to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the patent applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or where priority is claimed, at the priority date of application.
2. A Party may require a patent applicant to provide information concerning the applicant's corresponding foreign application and grants. A mere failure to comply with this requirement, may not result in revocation of or refusal to grant a patent, except where the competent authority determines there is deliberate or wilful suppression of information.
3. A patent granting authority may give due consideration to information concerning the applicant's corresponding foreign application and grants which is publicly available or otherwise available to the granting authority during the patent application process.

Article 14
Protection of Plant Varieties

Each Party shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof, in accordance with the TRIPS Agreement. The term of protection provided for in such a *sui generis* system shall not be shorter than 9 years for trees and vines, and 6 years for other plant varieties, from the date of the grant of the rights, which may be extended to 18 years for trees and vines, and 15 years for other plant varieties, in accordance with its domestic laws and

regulations. A Party may provide for additional years of protection beyond 18 and 15 years, respectively.

Article 15 *Undisclosed Information*

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.
2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices⁷ so long as such information:
 - (a) 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;
 - (b) has commercial value because it is secret; and
 - (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
3. Each Party, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize 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.

Article 16 *Designs*

Each Party shall provide for adequate and effective protection of registered industrial designs, in accordance with its domestic law, providing in particular a period of protection of at least 10 years, which may be further extended for a period of at least 5 years, in accordance with procedures specified under its domestic laws and regulations. For greater certainty, 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.

⁷ For the purpose of this provision, “a manner contrary to honest commercial practices” shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

SECTION C
ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

Article 17
Acquisition And Maintenance of Intellectual Property Rights

Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party 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.

SECTION D
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Article 18
General

Each Party shall provide for enforcement provisions under its domestic law for rights covered by Article 1 that are consistent with the level provided in Articles 41 to 61 of the TRIPS Agreement. The Parties agree that a Party may provide for enforcement measures at a level that is beyond what is provided in the TRIPS Agreement.

Article 19
Suspension of Release

1. For the purposes of this Article, “**intellectual property rights**” refers to trademarks, copyrights, geographical indications and designs.
2. Each Party shall provide for procedures to enable a right holder, who has valid grounds for suspecting that importation of goods infringing any intellectual property right may take place, to lodge an application in writing with the competent authorities, for the suspension by the customs authorities of the release into free circulation of such goods.
3. Notwithstanding paragraphs 1 and 5, the judicial authorities of a Party shall have the authority to, upon application from a right holder, prevent the exportation of goods suspected of infringing any intellectual property rights covered by this Annex, or order the suspension of release into free circulation of such goods at import, when goods are under the control of customs or other relevant border enforcement authorities of that Party.
4. Each Party shall also provide for procedures under which a right holder may record intellectual property rights with the customs authorities, with respect to goods for import.

5. Customs authorities of each Party shall, in accordance with their domestic procedures, suspend the release of goods upon:
 - (a) request of a right holder, who has valid grounds for suspecting that importation of goods infringing intellectual property rights may take place, and
 - (b) their own initiative, if they have valid grounds for suspecting that importation of these goods would infringe intellectual property rights,

Customs authorities of each Party shall promptly notify the applicant and the importer of the suspension of release.
6. Customs authorities of each Party shall use risk analysis to identify goods suspected of infringing intellectual property rights, with respect to goods for import.
7. There shall be no obligation to apply procedures under this Article to goods in transit.
8. There shall be no obligation to apply procedures under this Article to goods put on the market by or with the consent of the right holder.

Article 20 ***Right of Inspection***

1. A competent authority shall give the right holder the opportunity to inspect the goods that have been suspended by the customs authorities in order to substantiate the right holder's claims.
2. A competent authority may provide the right-holder samples of the suspended goods for examination, testing and analysis, according to the domestic laws and regulations in force in the Party concerned, to assist in determining whether the goods infringe intellectual property rights covered under Article 19, without prejudice to the protection of confidential information.

Article 21 ***Civil Remedies***

1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Annex.
2. Each Party shall provide that:
 - (a) in civil judicial proceedings, its judicial authorities 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 appropriate cases, in determining the amount of damages for intellectual property rights infringement, its judicial authorities may, *inter alia*, consider any legitimate measure of value that may be submitted by the right holder. Such measures of value to be considered by judicial authorities include, but are not limited to, the actual damage, lost profits or any profits made by the infringer; and
 - (c) its judicial authorities have the authority to order the infringer to pay the right holder legal costs.
- 3. Each Party shall provide that, in civil judicial proceedings with regard to the enforcement of intellectual property rights, its judicial authorities have the authority to order a party to desist from an infringement, *inter alia*, to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods.
- 4. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures:
 - (a) to prevent infringements of intellectual property rights from occurring, and in particular to prevent the entry of goods into channels of commerce in their jurisdiction, including imported goods immediately after customs clearance; and
 - (b) to preserve relevant evidence with regard to the alleged infringement.
- 5. The Parties' judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte*, where appropriate, in particular where delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed. On request for provisional measures, the Parties agree that their judicial authorities should act expeditiously and take a decision without undue delay.

Article 22

Criminal Remedies

The Parties shall, at least in cases of wilful infringement of trademarks, geographical indications, and copyright and related rights on a commercial scale, provide for criminal procedures and penalties to be applied.

Article 23
Co-operation 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 endeavour to enhance their cooperation in the field of intellectual property rights.
