

**ANNEX XVII**

REFERRED TO IN ARTICLE 5

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” covers in particular copyright, 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, where applicable, for goods, 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) TRIPS Agreement;
  - (b) 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) 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”);
  - (d) Patent Cooperation Treaty of 19 June 1970, as modified in 2001;
  - (e) Protocol of 27 June 1989 relating to the Madrid Agreement concerning the International Registration of Marks.

2. The Parties, which are not already parties to the 1978 Act of the International Convention for the Protection of New Varieties of Plants (UPOV) shall comply with the substantive provisions of the 1991 UPOV Act.<sup>1,2</sup>

3. The Parties, which are not party to one or more of the agreements listed in this paragraph shall endeavour to ratify or accede to them:

- (a) Geneva Act of 1999 of the Hague Agreement Concerning the International Registration of Industrial Designs;
- (b) WIPO Performances and Phonogram Treaty of 20 December 1996 (hereinafter referred to as “WPPT”);
- (c) WIPO Copyright Treaty of 20 December 1996;
- (d) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; (hereinafter referred to as the “Rome Convention”);
- (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 15 June 1957 Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks as amended by the Geneva Act of 1979;
- (g) Beijing Treaty of 24 June 2012 on Audiovisual Performances.

4. The Parties agree to hold expert meetings, upon request of a 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, *inter alia*, the WTO and the World Intellectual Property Organisation (hereinafter referred to as “WIPO”), as well as on relations of the Parties with third countries on matters concerning intellectual property.

5. 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.

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<sup>1</sup> This provision shall be without prejudice to the rights of Indonesia to protect its local plant varieties.

<sup>2</sup> Liechtenstein shall accede to UPOV.

**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 domestic laws and regulations, grant and ensure adequate and effective protection to the authors of works and to performers, producers of phonograms and audio-visual fixations and broadcasting organisations for their works, performances, phonograms, audio-visual fixations and broadcasts, respectively.
2. In addition to the protection provided for in the international agreements to which the Parties are parties or which the Parties shall ratify or accede to pursuant to paragraphs 2 and 3 of Article 2 (International Conventions), each Party shall grant and ensure protection as provided for in Articles 5, 6, 7, 8, 9 and 10 of the WPPT, *mutatis mutandis*, to performers for their audiovisual and visual performances.
3. Each Party shall ensure that a broadcasting organisation has at least the exclusive right of authorising the following acts: the retransmission, the distribution of fixations, the transmission following fixation, and the making available of fixed broadcasts, and the rebroadcasting by wireless means of broadcasts.
4. Each Party may, in its domestic laws and regulations, provide for the same kinds of limitations or exceptions with regard to the protection of performers for their visual and audiovisual performances, to the protection of producers of audio-visual fixations, and to broadcasting organisations as it provides for, in its national legislation, in connection with the protection of copyright in literary and artistic works.
5. The term of protection to be granted to performers under the Agreement shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.
6. The term of protection to be granted to producers of audio-visual fixations under the Agreement shall last, at least, until the end of a period of 50 years computed from the end of the year in which the audio-visual fixation was published, or failing such publication within 50 years from fixation of the audio-visual fixation, 50 years from the end of the year in which the fixation was made.
7. The term of protection to be granted to broadcasting organizations under the Agreement shall last, at least, until the end of a period of 20 years computed from the end of the year in which the broadcast took place.

8. A Party may be exempted from its obligations under paragraphs 6 and 7 where the exemptions provided for in Articles 7 and 7bis 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, holograms, sounds and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks.

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.

#### Article 5

##### ***Patents***

The Parties shall ensure at least 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. Patents shall be available and patent protection shall be granted and enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally-produced.<sup>3</sup> The level of protection shall correspond to that 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:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and
- (b) 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.

#### Article 6

##### ***Undisclosed Information***

1. With regard to agricultural chemical products, the Parties shall:

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<sup>3</sup> This Article shall be interpreted in accordance with the Record of Understanding.

- (a) when requiring, as a condition of approving the marketing of agricultural chemical products which utilise chemical or biological entities, the submission of undisclosed test data or other data, the origination of which involves a considerable effort, 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;
  - (b) 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 ten years; and
  - (c) make best efforts to process marketing approval applications expeditiously with a view to avoiding unreasonable delays.
2. With regard to pharmaceutical products, the Parties shall:
- (a) when requiring the submission of undisclosed test or other data as a condition of approving the marketing of pharmaceutical products, the origination of which involves a considerable effort, 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;
  - (b) in marketing authorisation procedures, in accordance with their respective domestic laws and regulations, process subsequent applications and grant marketing approval only after period of time defined in the domestic laws and regulations.

## Article 7

### ***Industrial Designs***

The Parties shall ensure in their domestic laws and regulations adequate and effective protection of industrial designs by providing in particular a period of protection of at least 10 years in total. Each Party may foresee that the right holder may have the term of protection renewed for one or more periods of five years each, up to the maximum term of protection established in each Party's domestic laws and regulations. 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***

1. The Parties shall ensure in their domestic laws and regulations adequate and effective means to protect geographical indications with regard to all goods.
2. For the purposes of this Annex, “geographical indications” mean 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 such goods is essentially attributable to their geographical origin.<sup>4</sup>
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 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 at least for agricultural products and foodstuffs for identical or comparable goods not originating in the place indicated by the designation in question.<sup>5</sup>

## Article 9

### ***Indications of Source and Country Names***

1. The Parties shall ensure in their domestic laws and regulations adequate and effective means to protect indications of source, names and flags of countries, with regard to all goods and services.
2. For the purposes of this Annex, “indications of source” means direct or indirect references to the geographical origin of goods or services.
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, company name or, where applicable, trade 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.

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<sup>4</sup> It is understood that the terms “quality”, “reputation” or and “other characteristic” include natural or human factors, or a combination of them

<sup>5</sup> Indonesia, Liechtenstein and Switzerland provide such level of protection for all types of goods.

5. The Parties shall provide the legal means for interested parties to prevent any incorrect or misleading use or registration of country names of a Party or of its territory names as trademarks or other protected titles, such as company names.

6. The Parties shall, in accordance with their obligations under Article 6<sup>ter</sup> of the Paris Convention, provide the legal means for interested parties to prevent that armorial bearings, flags and other State or regional emblems of a Party are used or registered as trademark or other protected titles, such as company names, in non-compliance with the conditions laid down in the domestic 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.

## Article 10

### *Genetic Resources and Traditional Knowledge*

1. The Parties reaffirm their sovereign rights over their natural resources. The Parties also recognise their rights and obligations as established by the Convention on Biological Diversity, the International Treaty on Plant Genetic Resources for Food and Agriculture and other relevant international agreements to which they are a party<sup>6</sup> with respect to access to genetic resources and associated traditional knowledge, the fair and equitable sharing of benefits arising out of the utilisation of these genetic resources, and associated traditional knowledge, considering the close and traditional dependence of indigenous and local communities embodying traditional lifestyles on genetic resources.

2. The Parties recognise the importance and the value of biological diversity and traditional knowledge of indigenous and local communities. Each Party shall determine the access conditions to its genetic resources in accordance with its international obligations.

3. The Parties shall take policy, legislative and administrative measures in accordance with their international obligations, as appropriate, for the fulfilment of terms and conditions for access to genetic resources and associated traditional knowledge.

4. The Parties shall take legislative, administrative or policy measures in accordance with their international obligations, as appropriate, with the aim of sharing in a fair and equitable way the benefits arising from commercial or other utilisation of genetic resources and associated traditional knowledge. Such sharing shall be based upon mutually agreed terms established at the time of access.

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<sup>6</sup> This includes in particular the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, for the Parties that are a party to that Protocol.



5. The Parties acknowledge the usefulness of the disclosure requirements of origin or source of genetic resources and associated traditional knowledge in patent applications, in accordance with their respective domestic laws and regulations, as a means to enhance the transparency about the utilisation of genetic resources and associated traditional knowledge. The Parties shall provide appropriate, effective and proportionate measures to address cases of non-compliance with such requirements.

6. In accordance with their international obligations, the Parties shall as far as possible, and as appropriate, cooperate in cases regarding non-compliance with applicable access and benefit-sharing legislations or regulatory requirements.

7. The Parties may, by mutual agreement, review this Article in light of the results of multilateral negotiations.

## Article 11

### ***Technology Transfer***

1. The Parties recognise that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

2. The Parties agree to exchange views and information on their domestic and international practices and policies affecting transfer of technology, in particular to the conditions necessary to create an adequate enabling environment for technology transfer, including issues such as the relevant legal framework and development of human capital.

## Article 12

### ***Transparency***

For the purposes of further promoting transparency in the administration of intellectual property protection systems, each Party shall, in accordance with its laws and regulations, take appropriate measures to:

- (a) publish patent applications, if applicable, immediately after the expiry of a period of 18 months from the filing date or, if priority has been claimed, from the priority date or before the expiry of the above specified period at the request of the applicant;
- (b) publish the grant of patents;
- (c) publish the registration of industrial designs except in the case of a publication postponement and except in the case of withdrawal of the application before the expiry of the postponement period;

- (d) make publically available the applications for registration, and the registrations of trademarks and the protection of new varieties of plants; and
- (e) make publically available information for protection of intellectual property rights for instance on an appropriate website.

### **SECTION III**

#### **ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS**

##### Article 13

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

### **SECTION IV**

#### **ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

##### Article 14

###### *General*

The Parties shall provide in their respective domestic laws and regulations for enforcement provisions for rights covered by Article 1 (Definition of Intellectual Property) that shall be at least of the same level as that provided in the TRIPS Agreement, in particular Article 41 to 61.

##### Article 15

###### *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 authority or authorities for the suspension by the customs authorities of the release of such goods.

2. The competent authorities of the Parties shall suspend the release of goods when they have valid grounds for suspecting that importation or exportation of those goods would infringe trademarks or copyrights.

3. The customs authorities shall inform the right holder in order to enable the lodging of an application according to paragraph 1.

4. In case of a suspension pursuant to paragraph 1 or 2 with respect to importation into or exportation from a Party, the competent authorities of that Party suspending the release of the goods shall notify the importer, exporter or the owner of the goods and right holder of the suspension. The right holder shall be provided with the necessary information to enforce his rights, such as the name and addresses of the consignor or consignee, and the importer or exporter, as applicable, and of the quantity of the goods in question.

5. 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.

6. Each Party 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 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 be indemnified against, costs and expenses that the right holder may have incurred in connection with the exercise of rights and remedies according to this Article.

## Article 16

### ***Right of Inspection***

1. The competent authority shall allow an applicant for the suspension of goods to inspect goods whose release has been suspended.

2. When examining goods, the competent authority or authorities may take samples and, in accordance with the domestic laws and regulations of the Party concerned, hand them over or send them to the right holder, at his 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 suspected infringing goods may be present at the inspection.

#### Article 17

##### ***Liability Declaration, Security or Equivalent Assurance***

The competent authority 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 18

##### ***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, their judicial authorities 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 19

##### ***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 20

***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.

**SECTION V**

**COOPERATION**

Article 21

***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.

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