

ANNEX XX

REFERRED TO IN ARTICLE 4

PROTECTION OF INTELLECTUAL PROPERTY

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SECTION I

GENERAL PROVISIONS

Article 1

Scope

This Annex covers 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, false indications of source, 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 (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 (Berne Convention);
 - (d) Patent Cooperation Treaty of 19 June 1970, as revised by the Washington Act of 2001;
 - (e) 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;
 - (f) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;

- (g) Geneva Act of 1999 of the Hague Agreement Concerning the International Registration of Industrial Designs;
- (h) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention);
- (i) Protocol of 27 June 1989 relating to the Madrid Agreement concerning the International Registration of Marks; and
- (j) 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.¹

2. The Parties shall comply with the substantive provisions of the following multilateral agreements:

- (a) World Intellectual Property Organization (WIPO) Copyright Treaty of 20 December 1996; and
- (b) WIPO Performances and Phonogram Treaty of 20 December 1996 (WPPT).

3. Each Party shall evaluate the possibility of acceding to the Marrakesh Treaty and the Beijing Treaty on Audiovisual Performances.

4. The Parties agree to promptly hold expert meetings, on request of a Party, on activities relating to the conventions referred to in paragraphs 1 to 3 or to future international conventions on harmonisation, administration, enforcement and developmental aspects 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.

¹ Liechtenstein is not yet a party to the Convention for the Protection of New Varieties of Plants. The obligation with regard to sub-paragraph (j) of paragraph 1 shall become applicable to Liechtenstein once it has become a party to the Convention.

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 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 under the Agreement, the Parties shall grant and ensure protection as provided for in:
 - (a) Articles 5, 6, 7, 8 and 10 of the WPPT, *mutatis mutandis*, to performers for their audio-visual and visual performances; and
 - (b) Articles 11, 12, 13 and 14 of the WPPT, *mutatis mutandis*, to producers of audio-visual fixations.
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, 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 audio-visual performances, to the protection of producers of audio-visual fixations, and to broadcasting organisations as it provides for, in its domestic laws and regulations, 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, 50 years from the end of the year in which the fixation was made.
7. The term of protection to be granted to broadcasting organisations 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.

Article 4

Trademarks

1. The Parties shall ensure in their domestic laws and regulations 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 shall grant the owner of a registered trademark the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. If an identical sign for identical goods or services is used, likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Parties making rights available on the basis of use.

3. Protection according to paragraph 2 shall not be limited to identical or similar goods or services where the trademark is well known in the country where the protection is sought and where the use of the trademark without due cause would be detrimental to its distinctive character or take unfair advantage or be detrimental to its repute.

4. The Parties reaffirm the importance of, and take into consideration 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.

5. Where a trademark is reproduced in a dictionary, other reference work or in a similar work without mention of the fact that it is registered, the owner of the trademark may require from the publisher or distributor of the work that a corresponding note be included, at the latest in a reprint.

Article 5

Patents

1. The Parties shall ensure in their domestic laws and regulations at least adequate and effective patent protection for inventions in all fields of technology in accordance

with the European Patent Convention, as implemented in their domestic laws and regulations.

2. The Parties' domestic laws and regulations shall not allow the grant of a compulsory licence based on the sole ground that a product protected by a patent or a product directly obtained from a patented process is imported and not locally produced. This paragraph shall be without prejudice to the granting of compulsory licenses on other grounds stipulated in their domestic laws and regulations and in compliance with the TRIPS Agreement.

3. The Parties shall consult in the Joint Committee regarding the compensatory patent term for the first time two years after the entry into force of the Agreement.

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 against 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 seven years for plant protection products.

3. 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 date² of marketing approval, of at least six years³ for pharmaceutical products⁴.

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 up to 25 years in total, without prejudice to possible terms of protection through other intellectual property categories. 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 Turkey may start counting the exclusivity period from the date of the first marketing approval in the Turkey-EU Customs Union Area.

³ As per conditions determined in national law (including case law).

⁴ Turkey may apply this paragraph to pharmaceutical products for human use only.

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 goods.
2. There shall be no obligation under this Article to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.
3. For the purposes of this 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 such goods 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 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 10bis of the Paris Convention.
5. The Parties shall, in accordance with their domestic laws and regulations, provide the legal means for interested parties to prevent the use of a geographical indication for agricultural products and foodstuffs for identical goods or goods of the same kind not originating in the place indicated by the designation in question. This provision shall apply to all types of goods, including agricultural products and foodstuffs, if the domestic laws and regulations of a Party so provides. At the time of signature of the Agreement this is the case for Liechtenstein, Switzerland and Turkey.

Article 9

*Country Names and False Indications of Source*⁵

1. The Parties shall provide the legal means for interested parties to prevent the commercial use of a false indication of source misleading the public or constituting an act of unfair competition within the meaning of Article 10bis of the Paris Convention.
2. 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 as any other protected title, such as company names or names of associations.

⁵ The provisions of this article are without prejudice to the obligations of the Parties which are a party to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891. At the time of signature of the Agreement, Liechtenstein, Switzerland and Turkey are parties to the aforementioned Agreement.

3. The Parties, in accordance with their obligations under Article 6ter of the Paris Convention, shall 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 trademarks or as any other protected titles, such as company names or names of associations, 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 a Party.

SECTION III

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

Article 10

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 11

General

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

Sub Section I

Border Measures

Article 12

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, including by electronic means, with the competent administrative or judicial authorities for the suspension of the release of such goods by the customs authorities.
2. The Parties shall enable their competent authorities to act on 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. The Parties authorise their customs authorities to inform the right holder in order to enable the lodging of an application according to paragraph 1.
3. 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 of goods put on the market by or with the consent of the right holder.
4. 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 goods shall notify the right holder of the suspension, and upon the request of the right holder shall provide necessary information to enforce his or her rights, such as the name and addresses of the consignor or consignee, declarant or the holder of the goods, as applicable, and the quantity of the goods in question, in accordance with the domestic laws and regulations of the Parties on the protection of confidential commercial, industrial or professional secrets.
5. Each Party shall ensure that their competent administrative or judicial authorities, on request from the right holder, have the authority to decide, upon submission of an interim injunction order where domestic laws and regulations of a Party so requires, 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 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 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.

2. When examining goods, the competent 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 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 suspected infringing goods may be present at the inspection with a view to protecting its confidential commercial, industrial or professional secrets.

Article 14

Liability Declaration, Security or Equivalent Assurance

The Parties shall ensure that their competent authorities have the authority to require an applicant to declare to accept liability towards the persons involved and, if domestic laws and regulations of a Party allow, 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.

Sub Section II

Judicial Measures

Article 15

Civil Remedies

1. The Parties shall provide that 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 injury the right holder has suffered as a result of the infringement.

2. In determining the amount of damages for intellectual property rights infringement, the judicial authorities may consider, *inter alia*, the actual damage or establishing a fair licence fee.

Article 16

Provisional Measures

1. Each Party shall ensure that its judicial authorities have the authority to order prompt and effective provisional measures:

- (a) to prevent infringements of any intellectual property right 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;
- (b) to preserve relevant evidence with regard to the alleged infringement.

2. The judicial authorities of the Parties shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

Article 17

Injunctions

Each Party shall ensure that, in civil judicial proceedings concerning 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.

Article 18

Removal from Commerce

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods, which they have found to be infringing, be disposed of outside the channels of commerce without any compensation, in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements predominantly used in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements. In considering such requests, proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 19

Criminal Remedies

The Parties shall provide for criminal procedures and penalties, at least for wilful trademark counterfeiting or copyright piracy on a commercial scale.

SECTION V
COOPERATION

Article 20

Cooperation in the Field of Intellectual Property

1. The Parties, recognising the growing importance of intellectual property rights as a factor of social, economic and cultural development, agree to enhance cooperation in the field of intellectual property rights.
2. The Parties acknowledge the importance of:
 - (a) promoting research, technological development and innovation;
 - (b) disseminating technology, information; and
 - (c) building and strengthening their technological capacities, and they will seek to cooperate in these areas, taking into account their resources.
3. The Parties shall take necessary measures to facilitate the transfer of technology⁶ through developing and implementing appropriate tools and mechanisms for facilitating and encouraging arrangements and the transfer of technology between private companies, research institutions, universities and other relevant stakeholders based in each Party, on mutually agreed terms, and in line with Article 7 of the TRIPS Agreement.
4. For the purposes of this Article, the technical cooperation shall include *inter alia* training and exchanging of personnel, carrying out joint projects, and supporting the establishment and reinforcement of relevant domestic offices and agencies of each Party, taking into account staff and financial resources of the Parties.
5. The Parties may request to have discussions in the Joint Committee regarding possible initiatives and projects under this Article.

Article 21

Exhaustion of Rights

1. The Parties shall apply their respective regimes for the exhaustion of intellectual property rights, subject to the relevant provisions of the TRIPS Agreement.
2. The Parties shall make an effort to explore means of cooperation in the area of exhaustion of rights with a view to further facilitating trade between them.

⁶ Transfer of technology may broadly refer *inter alia* to a series of processes enabling and facilitating flows of skills, knowledge, ideas, know-how and technology among different stakeholders such as university and research institutions, international organisations, IGOs, NGOs, private sector entities and individuals, as well as international technology transfer among countries.