

ANNEX XII

REFERRED TO IN ARTICLE 67

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, geographical indications (including appellations of origin), and 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 which are hereby incorporated into this Agreement, *mutatis mutandis*:

- (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) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention);
- (e) Patent Cooperation Treaty of 19 June 1970, as revised by the Washington Act of 2001;
- (f) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- (g) Protocol of 27 June 1989 relating to the Madrid Agreement concerning the International Registration of Marks; and

- (h) 1991 International Convention for the Protection of New Varieties of Plants (UPOV), unless the Party concerned is already a member of the 1978 UPOV¹.

2. The Parties shall ratify or accede to the following agreements before 2026, provided they are not yet a party, or comply with their substantive provisions by the same date:

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

3. The Parties shall, provided they are not yet a party, make all reasonable efforts to accede to and ensure an adequate and effective implementation of the obligations arising from the following multilateral convention:

- (a) Geneva Act of 1999 of the Hague Agreement Concerning the International Registration of Industrial Designs; and
- (b) Beijing Treaty on Audio-Visual Performances of 24 June 2012.

4. Upon request of a Party, the Parties shall promptly hold expert meetings, on activities relating to the conventions referred to in paragraphs 1 to 3 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 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 UPOV. The obligation in subparagraph 1 (h) of Article 2 (International Conventions) shall become applicable to Liechtenstein once it has become a party to UPOV.

SECTION II

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

Article 3

Copyright and related rights

1. The Parties shall, without prejudice to the obligations set out in the international agreements to which they are parties, in accordance with their domestic laws and regulations, grant and ensure adequate and effective protection to the authors of works and to performers, producers of phonograms and broadcasting organisations for their works, performances, phonograms, and broadcasts, respectively.

2. In addition to the protection provided for in paragraph 1 and in the international agreements to which the Parties are parties or which the Parties shall ratify or accede to pursuant to paragraph 2 of Article 2 (International conventions), each Party shall grant and ensure protection to audiovisual producers for their videograms or cinematographic works:

- (a) by applying Articles 11, 12, 13 and 14 of the WPPT, *mutatis mutandis*; or
- (b) by conferring instead an author's right to a cinematographic work to the person who took the initiative and the responsibility to realise it.

3. The Parties shall ensure that a broadcasting organisation has at least the exclusive right of authorising the fixation and the reproduction of their broadcasts. The Parties shall ensure broadcasting organisations have at least the right to receive a remuneration for acts of wireless retransmission or its communication to the public, in establishments accessible to the general public.

4. With regard to the protection of visual and audiovisual performances, phonograms, and broadcasts, the Parties may, in their domestic laws and regulations, provide for the same limitations or exceptions as they provide for in their domestic laws and regulations in connection with the protection of 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.²

6. The term of protection to be granted under the Agreement to audiovisual producers for their videograms or cinematographic works shall last at least:

² Protection begins with the performance, with the publication of the phonogram or audiovisual fixation, or with its fixation if it is not published. The term of protection is calculated from the end of the year in which the event determining the calculation occurred.

- (a) when applying Articles 11, 12, 13 and 14 of the WPPT *mutatis mutandis*, 50 years from the end of the year in which the videogram was published, or failing such publication within 50 years from fixation of the videogram, 50 years from the end of the year in which the fixation was made;
- (b) when conferring instead an author's right to a cinematographic work to the person who took the initiative and the responsibility to realise it, 50 years from the end of the year death of the author died.

7. The term of protection to be granted to broadcasting organisations under the Agreement shall last at least 20 years from the end of the year in which the broadcast took place.

Article 4

Trademarks

1. The Parties shall grant adequate and effective protection of trademarks for 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 trademarks are capable of being represented on the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

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. In case of the use of an identical sign for identical goods or services, a 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, whether registered or not, is well-known in the relevant country, provided that the use of the conflicting mark would indicate a connection between those goods or services and the owner of the well-known mark, and that the interests of the owner of the well-known mark would likely be damaged by such use. Cases of likelihood of damage may include situations such as where the use of the trademark without due cause would be detrimental to the distinctive character, or take unfair advantage, or be detrimental to the repute of the well-known mark.

4. No Party may require as a condition for determining that a trademark is well-known that the trademark has been registered in that Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

5. 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

1. The Parties shall at least ensure in their domestic laws and regulations that patents are available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraphs 2 and 3, 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. In line with TRIPS Agreement article 27(1), importation and offering on the market of a product shall be deemed to be “working of the patent” in the country of importation.

2. The Parties may 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 laws and regulations.

3. Each Party may also exclude from patentability:

- (a) any invention of methods for treatment of the human or animal body by surgery or therapy or for diagnostic methods practised on the human or animal body; this paragraph shall not apply to products, in particular substances or compositions, for use in any of these methods; and
- (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.

4. The Parties shall provide a patent applicant with opportunities to make amendments, corrections, and observations in connection with its application.

5. Recognising the benefits of transparency in the patent system, the Parties 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.

6. If a pending application is not published promptly in accordance with paragraph 5, the Parties shall publish such application or the corresponding patent as soon as practicable.
7. The Parties shall provide that an applicant may request the early publication of an application prior to the expiration of the period mentioned in paragraph 5.
8. Each Party shall adopt or maintain an exception for patents related to acts necessary for obtaining marketing authorisation or sanitary permit for a pharmaceutical product (regulatory review exception). The exception shall not unreasonably conflict with a normal exploitation of the patent and shall not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interest of third parties.
9. Each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval or sanitary permit process.
10. Compulsory licensing of patents shall only be granted under the terms of the TRIPS Agreement and the Doha Declaration.

Article 6

Undisclosed information

1. Each Party, when requiring, as a condition for granting the marketing approval or sanitary permit of pharmaceutical or agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.
2. No Party shall permit third persons not having the consent of the person providing the information to market a product based on this new chemical entity, on the basis of the approval granted to the person submitting such information for a period of at least five years from the date of approval for a pharmaceutical product and ten years from the date of approval for an agricultural chemical product³.

Article 7

Industrial designs

³ It is understood that the Parties may, in cases where the products for which the marketing approval or sanitary permit is requested were produced by the submitter of the undisclosed data or with his consent, allow the applicant to rely on that data.

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 15 years 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

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”, including appellations of origin as defined in the domestic laws and regulations of the Parties, mean indications which identify a good 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 the good is essentially attributable to its geographical origin.
3. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall provide 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 legal means for interested parties to oppose the registration or to request the invalidation of a trademark which contains or consists of a geographical indication of a Party with respect to goods not originating in the territory indicated, if such use misleads the public as to the true place of origin of the goods.
5. The Parties shall provide legal means for interested parties to prevent the use of a geographical indication for agricultural products and foodstuffs for goods of the same type not originating in the place indicated by the designation in question.
6. Without prejudice to this Article, Appendix (Geographical Indications) applies to the mutual recognition and protection of geographical indications of Liechtenstein, Switzerland and Chile.

Article 9

Country names, indications of source, state emblems and flags

1. The Parties shall provide the legal means for interested parties to prevent commercial use of country names of the Parties in a manner which misleads consumers as to the origin of such goods or services.
2. Indications of source shall be understood in accordance with the Paris Convention. The Parties shall provide appropriate legal means for interested parties to

prevent the use of false indications of source for goods or services, which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

3. The Parties shall, in accordance with their obligations under Article 6*ter* of the Paris Convention, refuse or invalidate the registration and prohibit by appropriate measures the use, without authorisation by the competent authorities, of armorial bearings, flags and other State emblems of a Party as trademarks or elements of trademarks.

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 the same level as that provided in the TRIPS Agreement, in particular in its Article 62.

SECTION IV

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Article 11

General principles

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

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 with the competent authorities, administrative or judicial, for the suspension by the customs authorities of the release of such goods.
2. The Parties shall enable customs 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, at least in the case of trademarks and copyrights. Customs authorities shall use risk analysis to identify goods suspected of infringing intellectual property rights, at least in the case of trademarks and copyrights.
3. The customs authorities of each Party shall either adopt procedures under which a right holder can record intellectual property rights with the customs authorities or maintain a regular dialogue and promote cooperation with relevant stakeholders and other authorities involved in the enforcement of intellectual property rights.
4. The competent authorities shall, in accordance with domestic procedures, suspend the release of the goods suspected of infringing intellectual property rights for which an application was filed as per the procedure under paragraph 1 or covered under paragraph 2.
5. The Parties shall authorise their customs authorities to inform the right holder in order to enable the lodging of an application according to paragraph 1.
6. It is understood that there shall be no obligation to apply procedures set forth in paragraphs 1 and 2 to the suspension of the release of goods put on the market by or with the consent of the right holder.

7. In case of suspension pursuant to paragraphs 1 and 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 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 goods in question.

8. Each Party shall ensure that the competent administrative or judicial authorities, upon request by 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.

9. 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.

10. Each Party may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.⁴

Article 13

Right of inspection

1. The Parties shall ensure that the competent authorities provide the applicant for the suspension of goods referred to in Article 12 (Suspension of release) and other persons involved⁵ in the suspension the opportunity to inspect goods whose release has been suspended.

2. When examining goods, the competent authorities may take samples and shall grant the right holder access to such samples for the purposes of analysis and of facilitating the subsequent procedure.

3. The declarant, holder or owner of the suspected infringing goods may, in accordance with the domestic laws and regulations of the Party concerned, be present at the inspection with a view to protecting its trade secret.

Article 14

Provisional measures and injunctions

⁴ If small consignments are excluded from the application of the above provisions, they shall only be so to the extent that they do not amount to import or export on a commercial scale.

⁵ The term 'other persons involved' shall be interpreted in accordance with the domestic laws and regulations of the Parties.

1. Each Party shall ensure 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.

2. 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. Upon request for provisional measures, the Parties' judicial authorities shall act expeditiously and take a decision without undue delay.

3. Each Party shall ensure 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 the proceedings 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 15

Removal from commerce

The Parties shall ensure that the competent judicial authorities in an infringement dispute may order, upon 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 or directly 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.

Article 16

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 ensure 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; and
- (b) in determining the amount of damages for intellectual property rights infringement, its judicial authorities shall consider, *inter alia*, the actual damage, lost profits, any profits made by the infringer or establishing a fair licence fee.

3. At least in cases of copyright or related right infringement and trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to order the infringer to pay the right holder the infringer's profits that are attributable to the infringement.

Article 17

Criminal remedies

The Parties shall provide for criminal procedures and penalties for wilful intellectual property rights infringements on a commercial scale.

Article 18

Security or equivalent assurance, liability declaration

In the context of Articles 12 (Suspension of release) and 14 (Provisional measures and injunctions), the Parties shall ensure that their competent authorities have the authority to require an applicant, 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. The Parties may fulfil this obligation by requiring an applicant to declare to accept liability towards the persons involved, instead of providing a security or equivalent assurance.

Article 19

Final judicial and administrative decisions

The Parties shall ensure that final judicial and administrative decisions relating to intellectual property rights are:

- (a) in writing and contain the findings of fact and the reasoning or the legal basis on which the decisions are based; and

- (b) published or otherwise made publicly available in a national language in such a manner as to enable interested parties to become acquainted with them, subject to protection of confidential information.

Article 20

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 cooperation in the field of intellectual property.
