

ANNEX XIII

REFERRED TO IN ARTICLE 4.1

PROTECTION OF INTELLECTUAL PROPERTY

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SECTION I

GENERAL PROVISIONS

ARTICLE 1

Definition of Intellectual Property

For the purposes of the Agreement, “intellectual property” comprises in particular copyrights, including the protection of computer programmes and compilations of data, as well as related rights, trademarks for goods and services, geographical indications (including appellations of origin) for goods, and indications of source for goods and services, industrial designs, patents, plant varieties, topographies of integrated circuits, as well as undisclosed information.

ARTICLE 2

International Conventions

1. The Parties shall abide by the following agreements, which are hereby incorporated into the 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;
- (d) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- (e) Nice Agreement of 15 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 1977;
- (f) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations;

- (g) World Intellectual Property Organisation (WIPO) Copyright Treaty of 20 December 1996;
- (h) WIPO Performances and Phonogram Treaty of 20 December 1996 (WPPT);
- (i) Beijing Treaty on Audiovisual Performances of 24 June 2012; and
- (j) Marrakesh Treaty of 27 June 2013 to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

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

- (a) Geneva Act of 2 July 1999 of the Hague Agreement Concerning the International Registration of Industrial Designs;
- (b) Patent Cooperation Treaty of 19 June 1970, as modified on 3 October 2001;
- (c) Protocol of 27 June 1989 relating to the Madrid Agreement concerning the International Registration of Marks;
- (d) 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV), unless the Party concerned is already a member of the 1978 UPOV;¹ and
- (e) Convention on the Grant of European Patents of 5 October 1973, as revised by the Act of 2000.

3. 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.

¹ Liechtenstein is not yet a party to UPOV. The obligation in subparagraph 2 (d) 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 videograms and broadcasting organisations for their works, performances, phonograms, videograms and broadcasts, respectively.
2. In addition to the protection provided for in the international agreements which the Parties shall abide by pursuant to paragraph 1 of Article 2 (International Conventions), each Party shall grant and ensure protection for producers of videograms by applying articles 11, 12, 13 and 14 of the WPPT, *mutatis mutandis*.
3. The Parties shall ensure that a broadcasting organisation has at least the exclusive right of authorising the following acts: the rebroadcasting of their broadcasts, the fixation of their broadcasts, the reproduction and distribution of fixations, and the communication to the public, by wire or wireless means, including the retransmission and the making available to the public of their fixed broadcasts in such a way that members of the public may access these broadcasts from a place and at a time individually chosen by them.
4. The Parties may, in their domestic laws and regulations, provide for the same kinds of limitations and exceptions with regard to the protection of producers of videograms and to broadcasting organisations as they provide for, in their 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 producers of videograms 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 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.
6. 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 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 is well known² in the relevant country and where the use of the trademark without due cause would be detrimental to the distinctive character or take unfair advantage or be detrimental to its repute.

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 recognise 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.

6. Where a trademark is reproduced in a dictionary, other reference work or in a similar work, in print or electronic form, without mention of the fact that it is registered, the Parties shall provide the legal means for the owner of the trademark to require from

² For the purposes of this paragraph, the Parties may consider the terms "reputed trademark" or "famous trademark" as equivalent to "well-known trademark".

the publisher of the work that a corresponding note be included, in case of printed form at the latest in a reprint.

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 3 and 4, 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. Importation and offering on the market of a product shall be deemed to be “working of the patent” in the country of importation.

2. Subject to paragraphs 3 and 4, and consistent with paragraph 1, the Parties shall ensure that patents are available for inventions claimed as new uses of a known product and new methods or processes of using a known product. A Party may limit those new uses, methods and processes to those that do not claim the use of the product as such.

3. 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.

4. 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) plant or animal varieties or essentially biological processes for the production of plants or animals and plants or animals exclusively obtained by means of an essentially biological process; this paragraph shall not apply to microbiological processes or the products thereof.

5. The Parties shall provide a patent applicant with opportunities to make amendments, corrections, and observations in connection with its application, provided that these do not contain subject-matter which extends beyond the content of the application as filed.

6. 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.

7. If a pending patent application is not published promptly in accordance with paragraph 6, the Parties shall publish such application or the corresponding patent as soon as practicable.

8. The Parties shall provide that a patent applicant may request the early publication of an application prior to the expiration of the period mentioned in paragraph 6, including if this period expires before the patent is granted.

9. Each Party may adopt or maintain an exception for patents related to acts necessary for obtaining marketing authorisation 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.

10. The Parties shall foresee a compensatory term of protection for pharmaceuticals and plant protection products, which shall be calculated from the expiry of the maximum term of patent of 20 years for a period equal to the period which elapsed between the filing date of the patent application and the date of the market authorisation of the product, reduced by a period of five years. Such compensatory protection shall cover a period of five years at the most³ and shall be granted under the following conditions:

- (a) the product is protected by a patent in force;
- (b) there has been an official marketing authorisation for the medicinal or plant protection product;
- (c) the right conferred by the patent has been postponed by administrative procedures regarding authorisation of market access, so that the effective use of the patent amounts to less than 15 years; and
- (d) the effective protection conferred by the patent and the compensatory protection shall together not exceed 15 years⁴.

ARTICLE 6

Undisclosed Information

1. The Parties, when requiring, as a condition of approving the marketing of pharmaceutical or plant protection and biocidal 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

³ For pharmaceuticals that have been tested for paediatric use, a six-month extension of the compensatory term of protection may be granted if the national law of a Party so provides.

⁴ For pharmaceuticals that have been tested for paediatric use, a six-month extension of the compensatory term of protection may be granted if the national law of a Party so provides.

necessary to protect the public, or unless steps are taken to ensure that the data are protected from unfair commercial use.

2. The Parties shall prevent applicants for marketing approval from relying on, or referring to, undisclosed test data or other data submitted to the competent authority by the first applicant for a period, counted from the date of marketing approval in the Party where marketing approval is sought, of at least 8 years for pharmaceutical products and at least 10 years for plant protection and biocidal products. In addition, for pharmaceutical products, the Parties shall ensure that no pharmaceutical product relying on, or referring to, undisclosed test data or other data submitted to the competent authority by the first applicant is placed on the market until 10 years have elapsed, counted from the date of the first marketing approval in the Party where marketing approval is sought.

3. The 10-year period regarding pharmaceutical products referred to in paragraph 2 shall be extended to a minimum of 11 years if, at least during the first 8 years of those 10 years, the marketing authorisation holder obtains an authorisation for one or more new therapeutic indications which, during the scientific evaluation prior to their authorisation, are held to bring a significant clinical benefit in comparison with existing therapies.

4. The Parties may permit reliance on or reference to such data in order to avoid unnecessary duplication of tests of plant protection and biocidal products involving vertebrate animals, provided that the first applicant is adequately compensated.

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 25 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” means 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 identical or comparable goods not originating in the place indicated by the designation in question.

6. Without prejudice to this Article, Appendix 1 (Mutual Recognition and Protection of Geographical Indications, Appellations of Origin and Indications of Source) applies to the mutual recognition and protection of geographical indications of Switzerland, Liechtenstein and the Republic of Kosovo.

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, armorial bearings 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 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, *inter alia* where such indication is used as a trademark, trade name or company name, 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 prevent the use of an indication of source for services, *inter alia* where such indication is used as a trademark, trade name or company 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.

5. The Parties shall provide 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.

6. The provision of the paragraph 3 above applies even if the geographical name is translated or used in a modified form if such use misleads the public as to the true place of origin of the goods.

7. The Parties, in accordance with Article 6^{ter} of the Paris Convention, shall prevent that armorial bearings, flags and other State or regional emblems of a Party are used or registered as trademarks, designs or 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 paragraph shall also apply to signs that may be confused with armorial bearings, flags and other State or regional emblems of a Party.

8. Without prejudice to this Article, Appendix 1 (Mutual Recognition and Protection of Geographical Indications, Appellations of Origin and Indications of Source) applies to the mutual recognition and protection of the indications of sources of Switzerland, Liechtenstein and the Republic of Kosovo.

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 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 (Definition of Intellectual Property) that shall at least be the same level as provided for in the TRIPS Agreement, in particular in 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 also adopt procedures with respect to goods for import or export, under which a right holder can record intellectual property rights with the customs authorities. The customs authorities shall carry out appropriate controls in order to identify goods suspected of infringing those recorded intellectual property rights.
3. The customs 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 which were recorded as per the procedure under paragraph 2.
4. The Parties shall enable their competent authorities to act upon their own initiative and suspend the release of goods when they have valid grounds for suspecting that importation or exportation of those goods would infringe intellectual property rights.
5. The customs authorities shall be active in targeting and identifying shipments containing import and export goods suspected of infringing an intellectual property right.
6. 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 and the recording according to paragraph 2.
7. 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.

8. 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.

9. 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.

10. 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.

11. Each Party may exclude small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments from the application of this Article. This Article applies to small consignments if they amount to import or export on a commercial scale.

ARTICLE 13

Right of Inspection

1. The competent authorities shall provide the applicant for the suspension of goods referred to in Article 12 (Suspension of Release) and other persons involved in the suspension with 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 trade secrets.

ARTICLE 14

Provisional Measures and Injunctions

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 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

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.
