

# CHAPTER ELEVEN

## INTELLECTUAL PROPERTY

### *Article 11.1*

#### **Objectives**

1. The objectives of this Chapter are to:
  - (a) facilitate the production and commercialisation of innovative and creative products and the provision of services between the Parties; and
  - (b) increase the benefits from trade and investment through the adequate and effective level of protection of intellectual property rights and the provision of measures for the effective enforcement of such rights.
2. The objectives and principles set forth in Part I of the TRIPS Agreement, in particular in Article 7 (Objectives) and Article 8 (Principles) shall apply to this Chapter, *mutatis mutandis*.

### *SECTION A*

#### ***Principles***

### *Article 11.2*

#### **Scope and Definitions**

1. The Parties recall the commitments under the international treaties dealing with intellectual property, including the TRIPS Agreement and the *Paris Convention for the Protection of Industrial Property* (of March 20, 1883, as revised at Stockholm on July 15, 1967; hereinafter referred to as the “Paris Convention”). The provisions of this Chapter shall complement the rights and obligations of the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property to which they both are parties.
2. For the purposes of this Chapter, “intellectual property rights” means:
  - (a) all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement namely:
    - (i) copyright and related rights;
    - (ii) patents;<sup>1</sup>

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<sup>1</sup> In the case of the Union, for the purposes of this Chapter, “patents” include rights derived from supplementary protection certificates.

- (iii) trademarks;
  - (iv) designs;
  - (v) layout-designs (topographies) of integrated circuits;
  - (vi) geographical indications;
  - (vii) protection of undisclosed information; and
- (b) plant variety rights.

### *Article 11.3*

#### **Exhaustion**

Each Party shall be free to establish its own regime for the exhaustion of intellectual property rights subject to the relevant provisions of the TRIPS Agreement.

### *SECTION B*

#### ***Standards Concerning Intellectual Property Rights***

##### *Sub-Section A*

#### ***Copyright and Related Rights***

### *Article 11.4*

#### **Protection Granted**

The Parties shall comply with the rights and obligations set out in the *Berne Convention for the Protection of Literary and Artistic Works* (of September 9, 1886, as last revised at Paris on July 24, 1971), the *WIPO Copyright Treaty* (adopted in Geneva on December 20, 1996), the *WIPO Performances and Phonograms Treaty* (adopted in Geneva on December 20, 1996), and the TRIPS Agreement.<sup>2</sup> The Parties may provide for protection of performers, producers of phonograms and broadcasting organisations in accordance with the relevant provisions of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* (done at Rome on October 26, 1961).

### *Article 11.5*

#### **Term of Protection**

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<sup>2</sup> Without prejudice to Article 11.6 (Producers of Phonograms), the Parties recognise that references to these international agreements are subject to the reservations which each Party has formulated in relation thereto.

1. Each Party shall provide, where the term of protection of a work is to be calculated on the basis of the life of the author, that the term shall be not less than the life of the author and seventy years after the author's death.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. The term of protection of cinematographic works<sup>3</sup> shall be not less than seventy years after the work has been made available to the public with the consent of the author or, failing such an event within fifty years from the making of such a work, at least seventy years after the making.<sup>4</sup>
4. The term of protection for rights in phonograms shall be not less than fifty years after the making and, if published within this period, no less than seventy years after the first lawful publication.
5. The term of protection for rights in broadcasts shall be not less than fifty years after the first transmission or making of the broadcast.
6. The terms laid down in this Article shall be calculated from the first of January of the year following the event which gives rise to them.

#### *Article 11.6*

#### **Producers of Phonograms**

Each Party shall provide producers of phonograms<sup>5</sup> with the right to a single equitable remuneration, if a phonogram published for commercial purposes or a reproduction of such phonogram is used for broadcasting by wireless means or public performance.<sup>6,7</sup>

#### *Article 11.7*

#### **Resale Rights**

The Parties agree to exchange views and information on practices and policies with regard to the resale rights of artists.

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<sup>3</sup> For the Union, the term "cinematographic works" also includes audiovisual works.

<sup>4</sup> In the case of the Union, the term of protection expires seventy years after the death of the last person designated as author under its domestic law, which will not in any case be shorter than the minimum duration of protection provided under paragraph 3 of Article 11.5 (Term of Protection).

<sup>5</sup> "Producer of a phonogram" means the person or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds.

<sup>6</sup> "Public performance" means, in relation to a phonogram, any mode of aural presentation to the public of sounds or representations of sounds fixed in a phonogram.

<sup>7</sup> Singapore shall fully implement the obligations of this Article within two years of the entry into force of this Agreement.

*Article 11.8*

**Cooperation on Collective Management of Rights**

The Parties shall endeavour to promote dialogue and cooperation among their respective collective management societies with the purpose of ensuring easier access and delivery of content between the territories of the Parties, and the transfer of royalties arising from the use of works or other copyright-protected subject matter.

*Article 11.9*

**Protection of Technological Measures**

1. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of any effective technological measures<sup>8</sup> that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorised by the authors, the performers or the producers of phonograms concerned or permitted by domestic law.<sup>9</sup>
2. In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 1, each Party shall provide protection at least against:
  - (a) to the extent provided by its domestic law:
    - (i) the unauthorised circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and
    - (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and
  - (b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:
    - (i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or

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<sup>8</sup> For the purposes of this Article, “technological measures” means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, performances, or phonograms, which are not authorised by authors, performers or producers of phonograms, as provided for by each Party’s domestic law. Without prejudice to the scope of copyright or related rights contained in each Party’s domestic law, technological measures shall be deemed effective where the use of protected works, performances, or phonograms is controlled by authors, performers or producers of phonograms through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection.

<sup>9</sup> Nothing in this Chapter shall require Singapore to restrict the importation or domestic sale of a device that does not render effective a technological measure which sole purpose is to control market segmentation for legitimate copies of motion pictures, and is not otherwise a violation of its domestic law.

- (ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.<sup>10</sup>
3. In providing adequate legal protection and effective legal remedies pursuant to paragraph 1, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraphs 1 and 2. The obligations under paragraphs 1 and 2 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under each Party's domestic law.

#### *Article 11.10*

### **Protection of Rights Management Information**

1. To protect electronic rights management information,<sup>11</sup> each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts knowing or, with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any copyright or related rights. Such following acts are:
- (a) to remove or alter any electronic rights management information;
  - (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or phonograms, knowing that electronic rights management information has been removed or altered without authority.
2. In providing adequate legal protection and effective legal remedies pursuant to paragraph 1, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraph 1. The obligations under paragraph 1 are without prejudice to the rights, limitations, exceptions or defences to copyright or related rights infringement under a Party's domestic law.

#### *Article 11.11*

### **Exceptions and Limitations**

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<sup>10</sup> In implementing paragraphs 1 and 2 of this Article, neither Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics product, telecommunications product or computing product, provide for a response to any particular technological measure, so long as the product does not otherwise contravene its measures implementing these paragraphs.

<sup>11</sup> For the purposes of this Article, "rights management information" means:

- (a) information that identifies the work, the performance, or the phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance or phonogram;
- (b) information about the terms and conditions of use of the work, performance, or phonogram; or
- (c) any number or codes that represent the information described in subparagraphs (a) and (b), when any of these items of information is attached to a copy of a work, performance, or phonogram, or appears in connection with the communication or making available of a work, performance or phonogram to the public.

The Parties may provide for limitations or exceptions to the rights under Article 11.6 (Producers of Phonograms) only in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the right holders.

#### *Sub-Section B*

#### ***Trademarks***

#### *Article 11.12*

### **International Agreements**

Each Party shall make all reasonable efforts to comply with the *Trademark Law Treaty* (done at Geneva on October 27, 1994) and the *Singapore Treaty on the Law of Trademarks* (adopted in Singapore on March 27, 2006).<sup>12</sup>

#### *Article 11.13*

### **Registration Procedure**

Each Party shall provide for a system for the registration of trademarks in which the relevant trademark administration shall give reasons for a refusal to register a trademark in writing. The applicant shall have the opportunity to appeal against such refusal before a judicial authority. Each Party shall introduce the possibility for third parties to oppose trademark applications. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.

#### *Article 11.14*

### **Well-Known Trademarks**

The Parties shall protect well-known trademarks in accordance with the TRIPS Agreement. In determining whether a trademark is well-known, the Parties shall give consideration to the *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 at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on September 20 to 29, 1999.

#### *Article 11.15*

### **Exceptions to the Rights Conferred by a Trademark**

Each Party:

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<sup>12</sup> Singapore is a party to the *Singapore Treaty on the Law of Trademarks*, while the Union shall make all reasonable efforts to facilitate accession to the *Singapore Treaty on the Law of Trademarks*.

- (a) shall provide for the fair use of descriptive terms<sup>13</sup> as a limited exception to the rights conferred by trademarks; and
- (b) may provide for other limited exceptions,

provided that these exceptions take account of the legitimate interests of the owners of the trademarks and of third parties.

### *Sub-Section C*

## ***Geographical Indications***<sup>14</sup>

### *Article 11.16*

#### **Scope**

1. Sub-Section C (Geographical Indications) applies to the recognition and protection of geographical indications for wines, spirits, agricultural products and foodstuffs which are originating in the territories of the Parties.
2. Geographical indications of a Party to be protected by the other Party shall only be subject to Sub-Section C (Geographical Indications) if they are recognised and declared as geographical indications in their country of origin.

### *Article 11.17*

#### **System of Protection of Geographical Indications**

1. Each Party shall, upon the entry into force of this Agreement, establish systems for the registration and protection of geographical indications in its territory, for such categories of wines and spirits and agricultural products and foodstuffs as it deems appropriate.
2. The systems referred to in paragraph 1 shall contain elements such as:
  - (a) a domestic register;
  - (b) an administrative process to verify that the geographical indications entered, or to be entered, on the domestic register referred to in subparagraph 2(a), identify a good as originating in the territory of a Party, or a region or locality in that Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

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<sup>13</sup> The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, and where such use is in accordance with honest practices in industrial or commercial matters.

<sup>14</sup> For the purposes of this Chapter, "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.

- (c) an objection procedure that allows the legitimate interests of third parties to be taken into account; and
  - (d) legal means that permit the rectification and cancellation of entries on the domestic register referred to in subparagraph 2(a), that take into account the legitimate interests of third parties and the right holders of the registered geographical indications in question.
3. The Parties shall, as soon as practicable after the procedures for protection of geographical indications in each Party<sup>15</sup> have been concluded for all the names listed in Annex 11-A, meet to adopt a decision in the Trade Committee referred to under Article 17.1 (Trade Committee) regarding the listing in Annex 11-B of the names from Annex 11-A of each Party that have been and remain protected as geographical indications under the respective Party's system as referred to in paragraph 2.

#### *Article 11.18*

#### **Amendment of List of Geographical Indications**

The Parties agree on the possibility of amending the list of geographical indications for wines, spirits, agricultural products and foodstuffs listed in Annex 11-B to be protected by each Party under Sub-Section C (Geographical Indications). Such amendments to Annex 11-B shall be subject to the geographical indications having been and remaining protected as geographical indications under the respective Party's system as referred to in paragraph 2 of Article 11.17 (System of Protection of Geographical Indications).

#### *Article 11.19*

#### **Scope of Protection of Geographical Indications**

1. Subject to Article 11.22 (General Rules), each Party shall, in respect of geographical indications for wines, spirits, agricultural products and foodstuffs listed in Annex 11-B and remaining protected as geographical indications under its system as referred to in paragraph 2 of Article 11.17 (System of Protection of Geographical Indications), provide the legal means for interested parties to prevent:
- (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; and
  - (b) any other use which constitutes an act of unfair competition within the meaning of Article 10*bis* (Unfair Competition) of the Paris Convention.

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<sup>15</sup> For the purposes of Sub-Section C (Geographical Indications), in the case of Singapore, the procedure for protection of geographical indications refers to the domestic registration procedure under the system established by Singapore pursuant to paragraph 2 of Article 11.17 (System of Protection of Geographical Indications).



2. Subject to Article 11.22 (General Rules), each Party shall, in respect of geographical indications for wines and spirits listed in Annex 11-B and remaining protected as geographical indications under its system as referred to in paragraph 2 of Article 11.17 (System of Protection of Geographical Indications), provide the legal means for interested parties to prevent the use of any such geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where:
  - (a) the true origin of the good is indicated;
  - (b) the geographical indication is used in translation; or
  - (c) the geographical indication is accompanied by expressions such as “kind”, “type”, “style”, “imitation”, or the like.
  
3. Subject to Article 11.22 (General Rules), each Party shall, in respect of geographical indications for agricultural products and foodstuffs listed in Annex 11-B and remaining protected as geographical indications under its system as referred to in paragraph 2 of Article 11.17 (System of Protection of Geographical Indications), provide the legal means for interested parties to prevent the use of any such geographical indication identifying a good for a like good<sup>16</sup> not originating in the place indicated by the geographical indication in question, even where:
  - (a) the true origin of the good is indicated;
  - (b) the geographical indication is used in translation;<sup>17</sup> or
  - (c) the geographical indication is accompanied by expressions such as “kind”, “type”, “style”, “imitation”, or the like.
  
4. Nothing in Sub-Section C (Geographical Indications) shall require a Party to apply its provisions in respect of a geographical indication in the case of the failure of a right holder to:
  - (a) renew the registration; or
  - (b) maintain minimal commercial activity or interest, including commercialisation, promotion or market monitoring,of the geographical indication in that Party’s market.

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<sup>16</sup> For the purposes of this paragraph and paragraph 1 of Article 11.21 (Relationship with Trademarks), the term “like good”, in relation to a good for which a geographical indication has been protected in a Party’s system as referred to in paragraph 2 of Article 11.17 (System of Protection of Geographical Indications), means a good that would fall within the same category of good in that Party’s register as the good for which a geographical indication has been registered.

<sup>17</sup> For greater certainty, it is understood that this is assessed on a case-by-case basis. This provision does not apply where evidence is provided that there is no link between the protected geographical indication and the translated term. It is further understood that this provision applies without prejudice to the general rules of Sub-Section C (Geographical Indications).

5. Without prejudice to paragraph 3 of Article 23 of the TRIPS Agreement, each Party shall determine the practical conditions under which homonymous geographical indications will be differentiated from each other in its territory, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
6. Where a Party receives an application for registration or protection of a geographical indication that is homonymous with one of the geographical indications in Annex 11-B, that Party will take into consideration the views and submissions of the applicant and the producers concerned<sup>18</sup> in determining the conditions under which the geographical indications will be differentiated from each other.

#### *Article 11.20*

### **Right of Use of Geographical Indications**

The person who may use a geographical indication protected under Sub-Section C (Geographical Indications) is not limited to the applicant, provided that such use is in relation to the goods as identified by that geographical indication.

#### *Article 11.21*

### **Relationship with Trademarks**

1. Subject to Article 11.22 (General Rules), in respect of geographical indications listed in Annex 11-B and remaining protected as geographical indications under a Party's system as referred to in paragraph 2 of Article 11.17 (System of Protection of Geographical Indications), the registration of a trademark for goods which contains, or consists of, a geographical indication identifying like goods shall be refused or invalidated *ex officio* if that Party's domestic law so permits, or at the request of an interested party, with respect to goods not having the origin of the geographical indication concerned, provided the application to register the trademark is submitted after the date of application for registration of the geographical indication in the territory concerned.
2. Without prejudice to paragraph 4, the Parties acknowledge that the existence of a prior conflicting trademark in a Party would not completely preclude the registration of a subsequent geographical indication for like goods.<sup>19</sup>
3. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith, if that possibility is provided by the Parties' respective domestic laws, either:

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<sup>18</sup> In the case of Singapore, "the producers concerned" refers to the right holders in question.

<sup>19</sup> In the case of Singapore, a geographical indication which conflicts with a prior existing trademark is capable of being registered with the consent of the prior existing trademark rights holder. In the case of the Union, such consent is not a prerequisite to the registration of a geographical indication which conflicts with a prior existing trademark.

- (a) before the date of application for protection of the geographical indication in the territory concerned; or
- (b) before the geographical indication is protected in its country of origin,

measures adopted to implement Sub-Section C (Geographical Indications) shall not prejudice the eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

- 4. The Parties shall have no obligation to protect a geographical indication pursuant to Sub-Section C (Geographical Indications) where, in the light of a reputed or well-known trademark, protection is liable to mislead consumers as to the true identity of the product.

#### *Article 11.22*

#### **General Rules**

- 1. Import, export and commercialisation of products referred to in Sub-Section C (Geographical Indications) in the territory of a Party shall be governed by the domestic law of that Party.
- 2. For agricultural products and foodstuffs, nothing in Sub-Section C (Geographical Indications) shall require a Party to prevent continued and similar use of any geographical indication of the other Party in connection with goods or services by any of its nationals or domiciliaries, who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Party either:
  - (a) for at least ten years preceding 1st January 2004; or
  - (b) in good faith preceding that date.
- 3. In relation to the geographical indications to be listed in Annex 11-B, where prior use has been determined pursuant to:
  - (a) the opposition proceedings during the domestic registration procedures; or
  - (b) any legal proceedings,

such prior use shall be listed in Annex 11-B in respect of the geographical indication in question:

- (i) in accordance with the mechanism established in paragraph 3 of Article 11.17 (System of Protection of Geographical Indications) in the case of subparagraph 3(a); and
- (ii) in accordance with the mechanism established in Article 11.18 (Amendment of List of Geographical Indications) in the case of subparagraph 3(b).

4. Each Party may determine the practical conditions under which such prior use will be differentiated from the geographical indication in its territory, taking into account the need to ensure that consumers are not misled.
5. Nothing in Sub-Section C (Geographical Indications) shall require a Party to apply its provisions in respect of a geographical indication of the other Party with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Party.
6. Nothing in Sub-Section C (Geographical Indications) shall require a Party to apply its provisions in respect of any name contained in a geographical indication of the other Party with respect to goods or services for which the name is identical with the term customary in common language as the common name for such goods or services in the territory of that Party.
7. Nothing in Sub-Section C (Geographical Indications) shall require a Party to apply its provisions in respect of a geographical indication of the other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party as of the date of entry into force of the WTO Agreement in that Party.
8. Nothing in Sub-Section C (Geographical Indications) shall prevent a Party from protecting as a geographical indication, in accordance with its domestic law, a term that conflicts with the name of a plant variety or animal breed.
9. A Party may provide that any request made under Sub-Section C (Geographical Indications) in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.
10. Nothing in Sub-Section C (Geographical Indications) shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.
11. Nothing in Sub-Section C (Geographical Indications) shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in accordance with the domestic law of its country of origin. The Parties shall notify each other if a geographical indication ceases to be protected in its country of origin.

*Article 11.23*

**Relation to Trade Committee**

The Trade Committee established pursuant to Article 17.1 (Trade Committee) shall have the authority to:

- (a) adopt a decision regarding the listing in Annex 11-B referred to in paragraph 3 of Article 11.17 (System of Protection of Geographical Indications) ; and
- (b) amend Annex 11-B in accordance with Article 11.18 (Amendment of List of Geographical Indications).

#### *Sub-Section D*

#### *Designs*

#### *Article 11.24*

#### **Requirements for Protection of Registered Designs<sup>20</sup>**

1. The Parties shall provide for the protection of independently created designs that are new or original.<sup>21</sup> This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with the provisions of Sub-Section D (Designs).<sup>22</sup>
2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.
3. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.<sup>23</sup>

#### *Article 11.25*

#### **Rights Conferred by Registration**

The owner of a protected design shall have the right to prevent third parties, not having the owner's consent, from at least making, offering for sale, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

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<sup>20</sup> For the purposes of Sub-Section (Designs), the Union also grants protection to the unregistered design when it meets the requirements of Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs, as last amended by Council Regulation (EC) No. 1891/2006 of 18 December 2006.

<sup>21</sup> The Parties agree that when the domestic law of a Party so provides, individual character of designs can also be required. This refers to designs that significantly differ from known designs or combinations of known designs' features. The Union considers designs to have individual character if the overall impression it produces on the informed users differs from the overall impression produced on such a user by any design which has been made available to the public.

<sup>22</sup> It is understood that designs are not excluded from protection simply on the basis that they constitute a part of an article or product, provided that they are visible, fulfil the criteria of this paragraph, and:

- (a) fulfil any other criteria for design protection; and
- (b) are not otherwise excluded from design protection, under the Parties' respective domestic law.

<sup>23</sup> Nothing in this Article precludes either Party from providing other specified exclusions from design protection under its domestic law. The Parties understand that such exclusions shall not be extensive.

*Article 11.26*

**Term of Protection**

The term of protection available shall amount to at least ten years from the date of application.

*Article 11.27*

**Exceptions**

The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

*Article 11.28*

**Relationship to Copyright**

The Parties shall offer the possibility that a design registered in a Party in accordance with Sub-Section D (Designs) is not completely precluded from enjoying protection under the domestic law of copyright of that Party. The extent to which, and the conditions under which, such protection is enjoyed shall be determined by that Party.<sup>24</sup>

*Sub-Section E*

***Patents***

*Article 11.29*

**International Agreements**

The Parties recall the obligations under the *Patent Cooperation Treaty* (done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984). The Parties shall, where appropriate, make all reasonable efforts to comply with Article 1 to Article 16 of the Patent Law Treaty (adopted in Geneva on June 1, 2000) in a manner consistent with their domestic law and procedures.

*Article 11.30*

**Patents and Public Health**

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<sup>24</sup> In the case of Singapore, the extent to which, and the conditions under which, such protection is enjoyed include the circumstances under section 74 of Singapore's Copyright Act.

1. The Parties recognise the importance of the *Declaration on the TRIPS Agreement and Public Health*, adopted on 14 November, 2001 by the Ministerial Conference of the WTO, at Doha. In interpreting and implementing the rights and obligations under Sub-Section E (Patents) and Sub-Section F (Protection of Test Data Submitted to Obtain an Administrative Marketing Approval to put a Pharmaceutical Product on the Market), the Parties shall ensure consistency with this Declaration.
2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, as well as the Decision of the WTO General Council of 6 December 2005 on *Amendment of the TRIPS Agreement*, adopting the Protocol Amending the TRIPS Agreement.

#### *Article 11.31*

### **Extension of the Duration of the Rights Conferred by a Patent**

The Parties recognise that pharmaceutical products<sup>25</sup> protected by a patent in their respective territories may be subject to an administrative marketing approval process before being put on their respective markets. The Parties shall make available an extension of the duration of the rights conferred by the patent protection to compensate the patent owner for the reduction in the effective patent life as a result of the administrative marketing approval process.<sup>26</sup> The extension of the duration of the rights conferred by the patent protection may not exceed five years.<sup>27</sup>

#### *Article 11.32*

### **Cooperation**

The Parties agree to cooperate on initiatives to facilitate:

- (a) the granting of patents on the basis of applications filed by applicants of a Party in the other Party; and
- (b) the qualification and recognition of patent agent professionals of a Party in the territory of the other Party.

#### *Sub-Section F*

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<sup>25</sup> For the purposes of this Article and Article 11.33 (Protection of Test Data Submitted to Obtain an Administrative Marketing Approval to put a Pharmaceutical Product on the Market), the term “pharmaceutical product” shall be defined for each Party, by the respective legislations of the Parties as at the date of signature of this Agreement. In the case of the Union, the term “pharmaceutical product” refers to “medicinal product”.

<sup>26</sup> Singapore undertakes to make available an extension of the duration of the rights conferred by patent protection to compensate the patent owner for the reduction in the effective patent life as the result of the administrative marketing approval process to substances for diagnosis or testing and authorised as a medicinal product.

<sup>27</sup> The conditions and procedures for the provision of the extension of the patent term shall be determined by the respective legislations of the Parties. This is without prejudice to a possible extension for paediatric purposes, if provided for by either Party.

## *Protection of Test Data*

### *Article 11.33*

#### **Protection of Test Data Submitted to Obtain an Administrative Marketing Approval to put a Pharmaceutical Product on the Market**

When a Party requires the submission of test data or studies concerning the safety and efficacy of a pharmaceutical product prior to granting approval for the marketing of such product, the Party shall not, for a period of at least five years from the date of approval in that Party, permit third parties to market the same or a similar product, on the basis of the marketing approval granted to the party which had provided the test data or studies, unless the party which had provided the test data or studies has given its consent.<sup>28, 29, 30</sup>

### *Article 11.34*

#### **Protection of Test Data Submitted to Obtain an Administrative Marketing Approval to put an Agricultural Chemical Product<sup>31</sup> on the Market**

1. When a Party requires the submission of test data or studies concerning the safety and efficacy of an agricultural chemical product prior to granting approval for the marketing of such product in that Party, the Party shall not, for a period of at least ten years from the date of approval, permit third parties to market the same or a similar product, on the basis of the marketing approval granted to the party which had provided the test data or studies, unless the party which had provided the test data or studies has given its consent.
2. Where a Party provides for measures or procedures to avoid duplicative testing on vertebrate animals with respect to agricultural chemical products, that Party may provide for the conditions and circumstances under which third parties may market the same or similar product, on the basis of the marketing approval granted to the party which had provided the test data or studies.

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<sup>28</sup> The conditions and procedures for the provision of the protection contemplated under this Article shall be determined by the respective legislations of the Parties.

<sup>29</sup> The Parties shall, five years after the entry into force of this Agreement, initiate without prejudice discussions on the possible extension of the duration of the protection of test data submitted to obtain an administrative marketing approval to put a pharmaceutical product on the market.

<sup>30</sup> In the context of this Article, it is understood that such confidential supporting test data or studies shall not be used for the purposes of determining whether to grant any other application for a period of at least five years:  
(a) in the case of Singapore, from the date that the first application is received;  
(b) in the case of the Union, from the date of approval of the first application,  
unless the party which had provided the test data or studies has given his consent.

<sup>31</sup> In the case of the Union, for the purposes of this Article, “agricultural chemical products” means active substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user, intended to:

- (a) protect plants or plant products against all harmful organisms or prevent the action of such organisms, in so far as such substances or preparations are not otherwise defined in subparagraphs (b) to (e);
- (b) influence the life processes of plants, other than as a nutrient (e.g. plant growth regulators);
- (c) preserve plant products, in so far as such substances or products are not subject to special Council or Commission provisions on preservatives;
- (d) destroy undesirable plants; or
- (e) destroy parts of plants, check or prevent undesirable growth of plants.



3. Where a Party requires the submission of test data or studies concerning the safety or efficacy of an agricultural chemical product prior granting an approval for the marketing of such product, the Party shall endeavour to make best efforts to process the application expeditiously with a view to avoiding unreasonable delays.

*Sub-Section G*

***Plant Varieties***

*Article 11.35*

**International Agreements**

The Parties reaffirm their obligations under the *International Convention for the Protection of New Varieties of Plants* (adopted in Paris on December 2, 1961, as last revised in Geneva on March 19, 1991), including their ability to implement the optional exception to the breeder's right, as referred to in paragraph 2 of Article 15 of this Convention.

*SECTION C*

***Civil Enforcement of Intellectual Property Rights***

*Article 11.36*

**General Obligations**

1. The Parties reaffirm their commitments under Articles 41 to 50 of the TRIPS Agreement and shall provide for the measures, procedures and remedies under their respective domestic law, against acts of infringement of intellectual property rights covered by this Chapter, that are in compliance with such commitments.
2. In particular, the measures, procedures and remedies referred to in paragraph 1, and provided for by each Party under its domestic law, shall:
  - (a) take into account, as appropriate, the need for proportionality between the seriousness of the infringement and the interests of third parties;
  - (b) be fair and equitable;
  - (c) not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays; and
  - (d) be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
3. Nothing in this Chapter affects the capacity of either Party to enforce its domestic law in general or creates any obligation on either Party to amend its existing laws as they relate to the enforcement of intellectual property rights. Without prejudice to the

foregoing general principles, nothing in this Chapter creates any obligation on either Party:

- (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general; or
- (b) with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

#### *Article 11.37*

### **Publication of Judicial Decisions**

In civil judicial proceedings instituted for infringement of an intellectual property right, each Party shall take appropriate measures, pursuant to its domestic law and policies, to publish or make available to the public information on final judicial decisions. Nothing in this Article shall require a Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. The Parties may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

#### *Article 11.38*

### **Availability of Civil Measures, Procedures and Remedies**

1. The Parties shall make available, in their respective domestic law and to right holders, the civil measures, procedures and remedies referred to in Section C (Civil Enforcement of Intellectual Property Rights) for the intellectual property rights as defined in paragraph 2.
2. For the purposes of Section C (Civil Enforcement of Intellectual Property Rights), the following terms have the following meanings:
  - (a) “right holders” shall include exclusive licensees as well as federations and associations<sup>32</sup> having the legal standing to assert such rights; and
  - (b) “intellectual property rights” means all categories of intellectual property that are the subject of Sections 1 to 6 of Part II of the TRIPS Agreement.<sup>33</sup>

#### *Article 11.39*

### **Measures for Preserving Evidence**

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<sup>32</sup> In so far as permitted by and in accordance with the provisions of the applicable law, it is understood that the phrase “federations and associations” includes collective rights management bodies and, in the Union context, professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights.

<sup>33</sup> A Party may exclude patents from the scope of Section C (Civil Enforcement of Intellectual Property Rights).

1. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures:
  - (a) against a party or, where appropriate, a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of any intellectual property right from occurring, and in particular to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce; and
  - (b) to preserve relevant evidence in regard to the alleged infringement.
2. Each Party shall provide that its judicial authorities 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. In proceedings conducted *inaudita altera parte*, each Party shall provide its judicial authorities with the authority to act expeditiously on requests for provisional measures and to make a decision without undue delay.
3. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, and of materials and implements relevant to the act of infringement, and, at least for trademark counterfeiting, of documentary evidence, either originals or copies thereof, relevant to the infringement.
4. Each Party shall provide that its authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to procedures for such provisional measures.
5. Where the provisional measures are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

#### *Article 11.40*

### **Evidence and Right of Information**

1. Without prejudice to each Party's domestic law governing privilege, the protection of confidentiality or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority, upon a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer, to provide, to the right holder or to the judicial authorities, at least for the purpose of collecting

evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls.

2. The relevant information referred to in paragraph 1 may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of such goods or services and of their channels of distribution.

#### *Article 11.41*

#### **Other Remedies**

1. Each Party shall provide that, in civil judicial proceedings where a judicial decision is taken finding an infringement of a right holder's intellectual property right, its judicial authorities shall, upon application by the right holder, have the authority to, at least with respect to pirated copyright goods and counterfeit trademark goods:
  - (a) order that such infringing goods be:
    - (i) destroyed, except in exceptional circumstances; or
    - (ii) disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder,without compensation of any sort; and
  - (b) order that materials and implements, the predominant use of which has been in the manufacture or creation of such infringing goods, shall be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements.
2. In considering any application by a right holder, as referred to in paragraph 1, 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.
3. The remedies under this Article may be carried out at the expense of the infringer.

#### *Article 11.42*

#### **Injunctions**

Each Party shall provide that, in civil judicial proceedings where a judicial decision is taken finding an infringement of a right holder's intellectual property right, its judicial authorities shall, upon application by the right holder, have the authority to issue against the infringer or, where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, an injunction aimed at prohibiting the continuation of the infringement. Where

provided for by the Party's domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment with a view to ensuring compliance.

#### *Article 11.43*

### **Alternative Measures**

Each Party may provide in its domestic law that, in civil judicial proceedings where a judicial decision is taken finding an infringement of a right holder's intellectual property right, in appropriate cases and on application by the person liable to be subject to the measures provided for in Article 11.41 (Other Remedies) and/or Article 11.42 (Injunctions), its judicial authorities have the authority to order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 11.41 (Other Remedies) and/or Article 11.42 (Injunctions), if that person acted unintentionally and without negligence, and if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.<sup>34</sup>

#### *Article 11.44*

### **Damages**

1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to order the infringer who, knowingly or with reasonable grounds to know, engaged in infringing activity 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 infringement of intellectual property rights, a Party's judicial authorities shall have the authority to consider, *inter alia*, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.<sup>35</sup> At least in cases of copyright or related rights 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, whether as an alternative to or in addition to or as part of the damages.
3. As an alternative to paragraph 2, each Party may provide that its judicial authorities have the authority, in appropriate cases, to set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

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<sup>34</sup> It is understood that, in the case of Singapore, Singapore may provide that its judicial authorities have the authority to order pecuniary compensation if that person acted unintentionally and without negligence, or if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

<sup>35</sup> In the case of the Union, this would also include, in appropriate cases, elements other than economic factors such as the moral prejudice caused to the right holder by the infringement.

4. Nothing in this Article precludes either Party from providing that where the infringer did not, knowingly or with reasonable grounds to know, engage in infringing activity, its judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

*Article 11.45*

**Legal Costs**

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of intellectual property rights, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's domestic law.

*Article 11.46*

**Presumptions Relating to Copyright and Related Rights**

In civil proceedings involving copyright or related rights, each Party shall provide for a presumption that, at least with respect to a literary or artistic work, performance or phonogram, in the absence of proof to the contrary, the natural or legal person whose name appears on such work, performance or phonogram in the usual manner, is the right holder and is consequently entitled to institute infringement proceedings.

*Article 11.47*

**Liability of Intermediary Service Providers**

1. Subject to paragraphs 2 to 6, each Party shall provide exemptions or limitations in its domestic law regarding the liability of, or scope of remedies available against, service providers for infringements of copyright or related rights or trademarks that take place through systems or networks controlled or operated by them or on their behalf.
2. The exemptions or limitations referred to in paragraph 1:
  - (a) shall cover the functions of:
    - (i) transmitting,<sup>36</sup> or providing access for material without selection and/or modification of its content<sup>37</sup>; and
    - (ii) caching carried out through an automatic process;<sup>38</sup> and

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<sup>36</sup> It is understood that the function of transmission includes the function of routing.

<sup>37</sup> It is understood that the function of providing access for material without selection and/or modification of the content also refers to any means that is used to access the communication network and includes instances where connections are provided for the material.

- (b) may also cover the functions of:
  - (i) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and
  - (ii) referring or linking users to an online location by using information location tools, including hyperlinks and directories.
- 3. Eligibility for the exemptions or limitations in this Article may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.
- 4. Each Party may prescribe in its domestic law, conditions for service providers to qualify for the exemptions or limitations in this Article. Without prejudice to paragraphs 1 to 3, each Party may establish appropriate procedures for effective notifications of claimed infringement and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification.
- 5. This Article is without prejudice to the availability of defences to the infringement of copyright or related rights, or trademarks, that are of general applicability. This Article shall not affect the possibility of a court or administrative authority, in accordance with each Party's legal system, requiring the service provider to terminate or prevent an infringement.
- 6. Either Party may request consultations with the other Party to consider how to address future functions of a nature similar to those addressed in this Article.

## *SECTION D*

### ***Border Measures***

#### *Article 11.48*

### **Definitions**

For the purposes of this Section,

- (a) “counterfeit geographical indication goods” means any goods, including packaging, bearing, without authorisation, a sign which is identical to the geographical indication validly registered in respect of such goods in the territory where the goods are, or which cannot be distinguished in its essential aspects from such a geographical indication and which thereby infringes the rights of the owner or holder of the geographical indication in question under the domestic law of the Party where the goods are;

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<sup>38</sup> It is understood that the process of caching carried out through an automatic process may refer to the intermediate and temporary storage of material in the course of transmission or providing access to such material.

- (b) “counterfeit trademark goods” means any goods, including packaging bearing, without authorisation, a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the domestic law of the Party where the goods are;
- (c) “goods in transit” means goods the passage of which across the territory of a Party, with or without transshipment, whether or not landed in the territory of the Party, warehousing, breaking bulk, or change in the mode of transport or conveyance, is only a portion of a complete journey beginning and terminating beyond the frontier of the Party across which territory the traffic passes;
- (d) “pirated copyright goods” means any goods which are copies made without the consent of the right holder or of a person duly authorised by the right holder in the country of production, and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the domestic law of the Party where the goods are;
- (e) “pirated design goods” means any goods in respect of which the design is registered and to which that design or a design not substantially different from it has been applied without the consent of the right holder or of a person duly authorised by the right holder in the country of production, where the making of those goods would have constituted an infringement under the domestic law of the Party where the goods are.

#### *Article 11.49*

#### **Scope of Border Measures**

1. Without prejudice to paragraph 3, each Party shall adopt or maintain procedures with respect to goods under customs control under which a right holder may request its competent authorities to suspend the release of suspect:
  - (a) counterfeit trademark goods;
  - (b) pirated copyright goods;
  - (c) counterfeit geographical indication goods; and
  - (d) pirated design goods.
2. Each Party shall adopt or maintain procedures with respect to goods under customs control, under which its competent authorities may act upon their own initiative to suspend the release of suspect:<sup>39</sup>
  - (a) counterfeit trademark goods;

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<sup>39</sup> The Parties will review the possibility of including pirated design goods within the scope of paragraph 2 of this Article within three years after the entry into force of this Agreement. The Parties may, by decision in the Trade Committee, amend paragraph 2 of this Article as a result of such review.



- (b) pirated copyright goods; and
  - (c) counterfeit geographical indication goods.
3. The Parties shall not have the obligation to provide for the procedures referred to in paragraphs 1 and 2 with regards to goods in transit. This is without prejudice to paragraph 2 of Article 11.51 (Cooperation).
  4. Singapore shall fully implement the obligations of paragraphs 1 and 2 ideally within two but no later than three years of the entry into force of this Agreement with regard to procedures with respect to:
    - (a) counterfeit geographical indication goods; and
    - (b) pirated design goods.

#### *Article 11.50*

#### **Identification of Shipments**

To facilitate the effective enforcement of intellectual property rights, the customs authorities shall adopt a range of approaches to identify shipments containing counterfeit trademark goods, pirated copyright goods, pirated design goods, and counterfeit geographical indication goods. These approaches include risk analysis techniques based, *inter alia*, on information provided by right holders, intelligence gathered and cargo inspections.

#### *Article 11.51*

#### **Cooperation**

1. The Parties agree to cooperate with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall, in particular, exchange information and arrange for cooperation, to be mutually agreed between their customs authorities, with regard to trade in counterfeit trademark goods, pirated copyright goods, pirated design goods, or counterfeit geographical indication goods.
2. For shipments of goods transiting or transhipped through the territory of a Party and destined for the territory of the other Party, which are suspected of being counterfeit or pirated, the Parties shall, upon their own initiative or upon request of the other Party, provide available information to the other Party to enable effective enforcement against those shipments. The Parties may not provide information which is submitted confidentially by the shipper, shipping line or its agent.

#### *SECTION E*

#### **Cooperation**

#### *Article 11.52*

## Cooperation

1. The Parties agree to cooperate with a view to supporting the implementation of the commitments and obligations undertaken under this Chapter. Areas of cooperation include, but are not limited to, the following activities:
  - (a) exchange of information on legal frameworks concerning intellectual property rights, including implementation of intellectual property legislation and systems, aimed at promoting the efficient registration of intellectual property rights;
  - (b) exchange, between respective authorities responsible for the enforcement of intellectual property rights, of their experiences and best practices concerning enforcement of intellectual property rights;
  - (c) exchange of information and cooperation on public outreach and appropriate initiatives to promote awareness of the benefits of intellectual property rights and systems;
  - (d) capacity-building and technical cooperation in relation, but not limited, to: management, licensing, valuation and exploitation of intellectual property rights; technology and market intelligence; facilitation of industry collaborations, including on intellectual property rights that may be applied towards environmental conservation or enhancement which may include establishing a platform or database; and public private partnerships to support culture and innovation;
  - (e) exchange of information and cooperation on intellectual property issues, where appropriate and relevant to developments in environmentally friendly technology; and
  - (f) any other areas of cooperation or activities as may be discussed and agreed between the Parties.
2. Without prejudice to paragraph 1, the Parties agree to designate a contact point for the purpose of maintaining dialogue including, where useful, convening meetings on intellectual property issues between their respective technical experts on matters covered by this Chapter.
3. Cooperation under this Article shall be carried out subject to each Party's laws, rules, regulations, directives or policies. Cooperation shall also be on mutually agreed terms and conditions and be subject to the availability of resources of each Party.