

LIMITED

*This **document** is the European Union's (EU) proposal for a legal text on Intellectual Property Rights in the EU-ESA5 deepening of interim agreement. It will be tabled for discussion with ESA5. The actual text in the final agreement will be a result of negotiations between the EU and ESA5.*

DISCLAIMER: *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

CHAPTER X

INTELLECTUAL PROPERTY

SECTION 1

GENERAL PROVISIONS

ARTICLE X.1

Objectives

The objectives of this Chapter are to:

- (a) facilitate the production, provision and commercialisation of innovative and creative products and services between the Parties by reducing distortions and impediments to such trade, thereby contributing to a more sustainable and inclusive economy; and
- (b) ensure an adequate and effective level of protection and enforcement of intellectual property rights.

ARTICLE X.2

Scope

1. In respect of each Party which is party to the TRIPS Agreement and other international agreements in the field of intellectual property, this Chapter shall complement and further specify its rights and obligations under those agreements.

2. This Chapter does not preclude either Party from introducing more extensive protection and enforcement of intellectual property rights than required under this Chapter, provided that such protection and enforcement does not contravene this Chapter.

ARTICLE X.3

TRIPS and public health

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 (the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Chapter, each Party shall ensure consistency with the Doha Declaration.

2. Each Party which is party to the TRIPS Agreement, shall implement Article 31*bis* of the TRIPS Agreement, as well as the Annex to the TRIPS Agreement and the Appendix to the Annex to the TRIPS Agreement.

ARTICLE X.4

Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C to the WTO Agreement;
- (b) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967;
- (c) "Berne Convention" means the Berne Convention for the Protection of Literary and

Artistic Works of 9 September 1886 revised at Paris on 24 July 1971 and amended on 28 September 1979;

- (d) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;
- (e) "WIPO" means the World Intellectual Property Organisation;
- (f) "intellectual property rights" means all categories of intellectual property that are covered by Articles X.8 to X.42 of this Chapter or Sections 1 to 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention;
- (g) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party.

ARTICLE X.5

International agreements

1. Articles 1-62 of the TRIPS Agreement are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Each Party shall ratify or accede to the following international agreements to which it is not yet a Party at the time of the entry into force of this Agreement:
 - (a) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;
 - (b) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996;

- (c) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June 2013;
- (d) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007;
- (e) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.

3. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:

- (a) the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012;
- (b) the Singapore Treaty on the Law of Trademarks adopted at Singapore on 27 March 2006.
- (c) the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and Regulations adopted in Geneva on 20 May 2015.

[NOTE: Specific assessment of each ESA5 member needs to be made in order to ensure at least a commitment of the accession to the core IP international treaties]

ARTICLE X.6

Exhaustion

This Chapter does not affect the freedom of the parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.

ARTICLE X.7

National treatment

1. In respect of all intellectual property rights covered by this Chapter, each Party shall accord to the nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property subject where applicable to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington on 26 May 1989.

2. For the purposes of paragraph 1 of this Article, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Chapter, including measures to prevent the circumvention of effective technological measures as referred to in **Article X.17** and measures concerning rights management information as referred to in **Article X.18**.

3. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, if such exceptions are:

- (a) necessary to secure compliance with the Party's laws or regulations which are not inconsistent with this Chapter; or
- (b) not applied in a manner which would constitute a disguised restriction on trade.

4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

SECTION 2

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE X.8

Authors

Each Party shall provide authors with the exclusive right to authorise or prohibit:

- (a) direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;
- (b) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof;
- (c) any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (d) the commercial rental to the public of originals or copies of their works.

ARTICLE X.9

Performers

Each Party shall provide performers with the exclusive right to authorise or prohibit:

- (a) the fixation of their performances;
- (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;
- (c) the distribution to the public, by sale or otherwise, of the fixations of their performances;
- (d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation;
- (f) the commercial rental to the public of the fixation of their performances.

ARTICLE X.10

Producers of phonograms

Each Party shall provide phonogram producers with the exclusive right to authorise or prohibit:

- (a) the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of their phonograms;

- (b) the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;
- (c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (d) the commercial rental of their phonograms to the public.

ARTICLE X.11

Broadcasting organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

- (a) the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (e) the rebroadcasting of their broadcasts by wireless means, as well as the

communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

ARTICLE X.12

Broadcasting and communication to the public of phonograms published for commercial purposes

1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or any communication to the public.
2. Each Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.
3. Each Party may grant more extensive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

ARTICLE X.13

Term of protection

1. The rights of an author of a work shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public.
2. For the purpose of implementing paragraph 1, each Party may provide for specific rules on the calculation of the term of protection of musical composition with words, works of

joint authorship as well as cinematographic or audiovisual works. Each Party may provide for specific rules on the calculation of the term of protection of anonymous or pseudonymous works.

3. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

4. The rights of performers for their performances otherwise than in phonograms shall expire 50 years after the date of the fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 50 years from the first such publication or communication to the public, whichever is the earlier.

5. The rights of performers for their performances fixed in phonograms shall expire 50 years after the date of fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 70 years from such act, whichever is the earlier.

6. The rights of producers of phonograms shall expire 50 years after the fixation is made or, if lawfully published to the public during this time, 70 years from such publication. In the absence of a lawful publication, if the phonogram has been lawfully communicated to the public during this time, the term of protection shall be 70 years from such act of communication. Each Party may provide for effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

7. The terms laid down in this Article shall be counted from the first of January of the year following the year of the event which gives rise to them.

8. Each Party may provide for longer terms of protection than those provided for in this Article.

ARTICLE X.14

Resale right

1. Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.
3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale, where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.
4. The procedure for collection of the remuneration and their amounts shall be determined by the law of each Party.

ARTICLE X.15

Collective management of rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in their respective territories and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.
2. The Parties shall promote transparency of collective management organisations, in particular regarding rights revenue they collect, deductions they apply to rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.

3. Each Party shall ensure that collective management organisations established in its territory and representing another collective management organisation established in the territory of the other Party by way of a representation agreement, are encouraged to accurately, regularly and diligently pay amounts owed to the represented collective management organisations as well as provide the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to this rights revenue.

ARTICLE X.16

Exceptions and limitations

Each Party shall confine limitations or exceptions to the rights set out in **Articles X.8 to X.12** to 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.

ARTICLE X.17

Protection of technological measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective. Each Party may provide for a specific regime for legal protection of technological measures used to protect computer programs.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

- (a) are promoted, advertised or marketed for the purpose of circumvention of;
- (b) have only a limited commercially significant purpose or use other than to circumvent; or

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures.

3. For the purposes of this Sub-Section, the expression "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 or other subject-matter, which are not authorised by the right holder of any copyright or related right covered by this Sub-Section.

Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.

4. Notwithstanding the legal protection provided for in paragraph 1 of this Article, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with **Article X.16** from enjoying such exceptions or limitations.

ARTICLE X.18

Obligations concerning rights management information

1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected pursuant to this Sub-Section from which electronic rights-management information has been removed or altered without authority;

if such person knows, or has reasonable grounds to know, that by so doing he or she is

inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by the law of a Party.

2. For the purposes of this Article, "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Article, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

3. Paragraph 2 applies if any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Article.

SUB-SECTION 2

TRADE MARKS

ARTICLE X.19

Trade mark classification

Each Party shall maintain a trade mark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as amended and revised.

ARTICLE X.20

Signs of which a trade mark may consist

A trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

- (a) distinguishing the goods or services of one undertaking from those of other undertakings; and
- (b) being represented on the respective trade mark register of each Party, 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.

ARTICLE X.21

Rights conferred by a trade mark

1. Each Party shall provide that the registration of a trade mark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having the proprietor's consent from using in the course of trade:

- (a) any sign which is identical with the registered trade mark in relation to goods or services which are identical with those for which the trade mark is registered;
- (b) any sign where, because of its identity with, or similarity to, the registered trade mark and the identity or similarity of the goods or services covered by this trade mark and the sign, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the registered trade mark.

ARTICLE X.22

Registration procedure

- 1. Each Party shall provide for a system for the registration of trade marks in which each final negative decision, included partial refusal, taken by the relevant trade mark administration shall be communicated in writing to the relevant party, duly reasoned and subject to appeal.
- 2. Each Party shall provide for the possibility for third parties to oppose trade mark applications or, where appropriate, trade mark registrations. Such opposition proceedings shall be adversarial.
- 3. Each Party shall provide a publicly available electronic database of trade mark applications and trade mark registrations.

ARTICLE X.23

Well-known trade marks

For the purpose of giving effect to protection of well-known trade marks, as referred to in

Article 6bis of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply 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 20 to 29 September 1999.

ARTICLE X.24

Exceptions to the rights conferred by a trade mark

1. Each Party shall provide for limited exceptions to the rights conferred by a trade mark such as the fair use of descriptive terms including geographical indications, and may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the proprietor of the trade mark and of third parties.

2. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

- (a) the name or address of the third party, where the third party is a natural person;
- (b) signs or indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services; or
- (c) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts,

provided the third party uses them in accordance with honest practices in industrial or commercial matters.

3. The trade mark shall not entitle the proprietor to prohibit a third party from using, in

the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Party in question and is used within the limits of the territory in which it is recognised.

ARTICLE X.25

Grounds for revocation

1. Each Party shall provide that a trade mark shall be liable to revocation if, within a continuous period of five years it has not been put to genuine use in the relevant territory of a Party by the proprietor or with the proprietor's consent in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.

3. However, no person may claim that the proprietor's rights in a trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trade mark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.

4. A trade mark shall also be liable to revocation if, after the date on which it was registered:

- (a) as a consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered;
- (b) as a consequence of the use made of the trade mark by the proprietor of the trade mark or with the proprietor's consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

ARTICLE X.26

The right to prohibit preparatory acts in relation to the use of packaging or other means

Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trade mark is affixed could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of the trade mark, the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

- (a) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed; or
- (b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

ARTICLE X.27

Bad faith applications

A trade mark shall be liable to be declared invalid where the application for registration of the trade mark was made in bad faith by the applicant. Each Party may provide that such a trade mark shall not be registered.

SUB-SECTION 3

GEOGRAPHICAL INDICATIONS

ARTICLE X.28

Scope of application

This Sub-Section applies to geographical indications, as defined in Article 22(1) of the TRIPS Agreement, originating in the territories of the Parties.

Geographical indications of a Party shall be protected under this Sub-Section by the other Party only if covered by the scope of its domestic legislation referred to in **Article X.29**.

ARTICLE X.29

Protected geographical indications

1. Having examined the ESA legislation listed in Annex I Part A the Union concludes that this legislation meets the elements laid down in Annex I Part B.
2. Having examined the Union legislation listed in Annex I Part A, ESA concludes that this legislation meets the elements laid down in Annex I Part B.
3. Following the completion of an opposition procedure in accordance with the criteria set out in Annex II and an examination of the geographical indications of the Union listed in Annex III, which have been registered by the Union under the legislation referred to in paragraph 2, ESA shall protect those geographical indications according to the level of protection laid down in this Sub-Section.
4. Following the completion of an opposition procedure in accordance with the criteria set out in Annex II and an examination of the geographical indications of ESA listed in Annex III, which have been registered by ESA under the legislation referred to in paragraph 1, the Union shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

ARTICLE X.30

Amendment of the list of geographical indications

1. The [Committee on Intellectual Property] shall add new geographical indications to the list in Annex III following the completion of an opposition procedure in accordance with the criteria set out in Annex II and an examination to the satisfaction of both Parties.
2. The [Committee on Intellectual Property] may also delete the geographical indications listed in Annex III.

ARTICLE X.31

Protection of geographical indications

1. Geographical indications listed in Annexes III, shall be protected against:
 - (a) any direct or indirect commercial use of a protected name:
 - for comparable products not compliant with the product specification of the protected name, or
 - in so far as such use exploits the reputation of a geographical indication, including if the corresponding product is used as an ingredient;
 - (b) any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated, transcribed or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar;
 - (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin, including if those products are used as an ingredient;
 - (d) any other practice liable to mislead the consumer as to the true origin of the product or which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Geographical indications listed in annex III shall not become generic in the territories of the Parties.
3. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in the territory of origin. Each Party shall notify to the other Party if a geographical indication ceases to be protected in the territory of that Party of origin. Such notification shall take place in accordance with the procedure laid down in paragraph 2 of **Article X.31**.
4. Nothing in this Sub-Section shall prejudice the right of any person to use, in the course of trade, that person's name or that person's predecessor in business, except where such name is used in such a manner to mislead the public.

ARTICLE X.32

Right of use of geographical indications

1. A name protected under this Sub-Section may be used by any operator marketing a product, which complies with the corresponding specification.
2. Once a geographical indication is protected under this Sub-Section, the use of such protected name shall not be subject to any registration of users or further charges.

ARTICLE X.33

Relationship with trade marks

1. Each Party shall, where a geographical indication is protected under this Sub-Section, refuse to register a trade mark the use of which would contravene paragraph 1 of **Article X.31**, provided that an application to register the trade mark is submitted after the date of submission of the application for protection of the geographical indication in the territory of the Party concerned.
2. Trade marks registered in breach of paragraph 1 shall be invalidated.

3. For geographical indications referred to in **Article X.29**, the date of submission of the application for protection referred to in paragraph 1 shall be the date of entry into force of this Agreement.
4. For geographical indications referred to in **Article X.30**, the date of submission of the application for protection referred to in paragraph 1 shall be the date of the transmission of a request to the other Party to protect a geographic indication.
5. Without prejudice to paragraph 7, each Party shall protect geographical indications also where a prior trade mark exists. A prior trade mark shall mean a trade mark the use of which contravenes paragraph 1 of **Article X.31**, which has been applied for, registered or established by use, if that possibility is provided for by the legislation of the Parties, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Sub-Section.
6. Such prior trade mark may continue to be used and renewed for that product notwithstanding the protection of the geographical indication, if no grounds for the trade mark's invalidity or revocation exist in the legislation on trade marks of the Parties. In such cases, the use of the protected geographical indication shall be permitted as well as the use of the relevant trade mark.
7. A Party shall not be required to protect a name as a geographical indication under this Sub-Section if, in the light of a trade mark's reputation and renown and the length of time it has been used, that name is liable to mislead the consumer as to the true identity of the product.

ARTICLE X.34

Enforcement of protection

1. Each Party shall ensure that its administrative and judicial authorities are competent to take appropriate measures to prevent or stop the unlawful use of protected geographical indications. Each Party shall ensure that such measures are available by administrative action or at the request of an interested party.
2. Each Party shall ensure that geographical indications are recognised as a prior title that shall prevent the registration or use of a domain name in bad faith, the registration or use of

which would be liable to lead to infringements of paragraph 1 of Article X.30 [Protection of geographical indications].

ARTICLE X.35

Other provisions

1. A Party shall not be required to protect a name as geographical indication under this Sub-Section if that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true identity of the product.
2. A wholly or partially homonymous name, which misleads consumers into believing that a product originates from another territory, shall not be protected even if the name is accurate as far as the actual territory, region of place of origin of the product in question is concerned. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which the wholly or partially homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
3. When a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of the third country, which is wholly or partially homonymous with a geographical indication of the other Party protected under this Sub-Section, it shall inform the other Party thereof and give it the opportunity to comment before the third country's geographical indication becomes protected.
4. A product specification referred to in this Sub-Section shall be that approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates.
5. Any matter arising from product specifications of protected geographical indications shall be dealt with in the [Committee on Intellectual Property].
6. Geographical indications protected under this Sub-Section may only be cancelled by the Party in which the product originates.
7. No fees shall be charged for the protection of geographical indications under this Sub-Section.

06/06/2021

Without prejudice
LIMITED

ANNEX I

Part A

Legislation of the parties

Legislation of the ESA

Legislation of the EU:

(a) Regulation (EU) No 1151/2012¹ of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs and its implementing rules;

(b) Regulation (EU) No 1308/2013² of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in particular Articles 92 to 111 on designations of origin and geographical indications, and Articles 112 to 116 on traditional terms, and its implementing rules;

(c) Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008³, and its implementing rules;

(d) Regulation (EU) No 251/2014⁴ of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, and its implementing rules.

¹ OJ L 343, 14.12.2012, p. 1.

² OJ L 347, 20.12.2013, p.671.

³ OJ L 130, 17.5.2019, p. 1–54

⁴ OJ L 84, 20.3.2014, p. 14.

Part B

Elements for registration and control of geographical indications

as referred to in **Article X.29(1) and X.29(2)**

1. a register listing geographical indications protected in the territory;
2. an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the Parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
3. a requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;
4. control provisions applying to production;
5. enforcement of the protection of registered names by appropriate administrative action by the public authorities;
6. legal provisions laying down that a registered name may be used by any operator marketing the agricultural product or foodstuff conforming to the corresponding specification;
7. provisions concerning the registration, which may include refusal of registration, of terms homonymous or partly homonymous with registered terms, terms customary in common language as the common name for goods, terms comprising or including the names of plant varieties and animal breeds. Such provisions shall take into account the legitimate interests of all parties concerned;
8. rules concerning relation between geographical indications and trade marks providing for a limited exception to the rights conferred under trade mark law to the effect that the existence of a prior trade mark shall not be a reason to prevent the registration and use of a name as a registered geographical indication except where by reason of the trade mark's renown and the length of time it has been used, consumers would be misled by the registration and use of the GI on products not covered by the trade mark.

9. a right for any producer established in the area who submits to the system of controls to produce the product labelled with the protected name provided that the said producer complies with the product specifications;
10. an opposition procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

ANNEX II

Criteria to be included in the opposition procedure

[as referred to in Article X.29(3) and (4)]

- a. List of name(s);
- b. The product type;
- c. An invitation:
 - in the case of the European Union, to any natural or legal persons except those established or resident in ESA,
 - in the case of ESA , to any natural or legal persons except those established or resident in a Member State of the European Union,
 - having a legitimate interest, to submit objections to such protection by lodging a duly substantiated statement;
- d. Statements of opposition must reach the European Commission or the ESA Governments within 2 months from the date of the publication of the information notice;
- e. Statements of opposition shall be admissible only if they are received within the time-limit set out above and if they show that the protection of the name proposed would:
 - conflict with the name of a plant variety, including a wine grape variety or an animal breed and as a result is likely to mislead the consumer as to the true identity of the product;

- be wholly or partially homonymous name which misleads the consumer into believing that products come from another territory;
 - in the light of a trade mark's reputation and renown and the length of time it has been used, be liable to mislead the consumer as to the true identity of the product;
 - jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication of this notice;
 - or lead to the protection as a geographical indication of a name which is considered to be generic.
- f. the criteria referred to above shall be evaluated in relation to the territory of (the European Union, which in the case of intellectual property rights refers only to the territory or territories where the said rights are protected) / (of the ESA]

ANNEX III

Geographical indications for products as referred to in **Articles [X.]29**

PART A

Geographical indications of the European Union to be protected in ESA

[...]

PART B

Geographical indications of ESA to be protected in the European Union

[...]

SUB-SECTION 4

DESIGN

ARTICLE X.36

Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new and original. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Sub-Section.

For the purposes of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the protected design or using articles bearing or embodying the protected design where such acts are undertaken for commercial purposes.

3. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:

- (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and
- (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

4. For the purposes of point (a) of paragraph 3, "normal use" means use by the end user, excluding maintenance, servicing or repair work.

ARTICLE X.37

Duration of protection

The duration of protection available for registered designs, including renewals of registered designs, shall amount to a total term of 25 years from the date on which the application was filed.

ARTICLE X.38

Protection of unregistered designs

- 1. Each Party shall confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory. Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product.
- 2. The duration of protection available for the unregistered design shall amount to at least three years as from the date on which the design was first made available to the public

in the territory of the respective Party.

ARTICLE X.39

Exceptions and exclusions

1. Each Party may provide limited exceptions to the protection of designs, including unregistered designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of designs, and do not unreasonably prejudice the legitimate interests of the holder of the design, taking account of the legitimate interests of third parties.

2. Protection shall not extend to designs solely dictated by its technical function. A design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

3. By way of derogation from paragraph 2 of this Article, a design shall, in accordance with the conditions set out in **Article X.36(1)**, subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

ARTICLE X.40

Relationship to copyright

Each Party shall ensure that designs, including unregistered designs, shall also be eligible for protection under the copyright law of that Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

SUB-SECTION 5

PROTECTION OF UNDISCLOSED INFORMATION

ARTICLE X.41

Protection of trade secrets

1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.
2. For the purposes of this Sub-Section, the following definitions apply:
 - (a) "trade secret" means information which meets all of the following requirements:
 - (i) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - (ii) it has commercial value because it is secret; and
 - (iii) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;
 - (b) "trade secret holder" means any natural or legal person lawfully controlling a trade secret.
3. For the purposes of this Sub-Section, at least the following conduct shall be considered contrary to honest commercial practices:

- (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever obtained by unauthorised access to, or by appropriation or copying of, any documents, objects, materials, substances or electronic files that are lawfully under the control of the trade secret holder, and that contain the trade secret or from which the trade secret can be deduced;
- (b) the use or disclosure of a trade secret whenever it is carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
 - (i) having acquired the trade secret in a manner referred to in point (a);
 - (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
 - (iii) being in breach of a contractual or any other duty to limit the use of the trade secret;
- (c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew, or ought to have known, under the circumstances that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b).

4. Nothing in this Sub-Section shall be understood as requiring either Party to consider any of the following conducts as contrary to honest commercial practices:

- (a) independent discovery or creation;
- (b) the reverse engineering of a product that has been made available to the public or that is lawfully in the possession of the acquirer of the information, where the acquirer of the information is free from any legally valid duty to limit the acquisition of the trade secret;

06/06/2021

Without prejudice
LIMITED

- (c) the acquisition, use or disclosure of a trade secret required or allowed by the law of each Party;
- (d) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the laws and regulations of that Party.

5. Nothing in this Sub-Section shall be understood as affecting the exercise of freedom of expression and information, including the freedom and pluralism of the media, as protected in each Party, restricting the mobility of employees, or as affecting the autonomy of social partners and their right to enter into collective agreements, in accordance with the laws and regulations of the Parties.

SUB-SECTION 6

PLANT VARIETIES

ARTICLE X.42

Protection of plant varieties rights

Each Party shall protect plant varieties rights in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on 19 March 1991.

SECTION 3

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

GENERAL PROVISIONS

ARTICLE X.43

General obligations

1. Each Party shall provide under its respective law for the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.

For the purposes of Sub-Sections 1, 2 and 4 of this Section, the term "intellectual property rights" does not include rights covered by Sub-Section 5 of Section 2.

2. The measures, procedures and remedies referred to in paragraph 1 shall:

- (a) be fair and equitable;
- (b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;
- (c) be effective, proportionate and dissuasive;
- (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.

ARTICLE X.44

Persons entitled to apply for the application of the measures, procedures and remedies

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in Sub-Sections 2 and 4 of this Section:

- (a) the holders of intellectual property rights in accordance with the law of a Party;
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of a Party; and
- (c) federations and associations⁵, in so far as permitted by and in accordance with the law of a Party.

⁵ For greater certainty, and in so far as permitted by the law of a Party, the term "federations and associations" includes at least collective rights management bodies and professional defence bodies which are regularly recognised as having the right to represent holders of intellectual property rights.

SUB-SECTION 2

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE X.45

Measures for preserving evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support their claims that their intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to appropriate safeguards and the protection of confidential information.
2. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.

ARTICLE X.46

Evidence

1. Each Party shall take the measures necessary to enable the competent judicial authorities to order, on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, that this evidence be produced by the opposing party, subject to the protection of confidential information.
2. Each Party shall also take the necessary measures to enable the competent judicial

authorities to order, where appropriate, in cases of infringement of an intellectual property right committed on a commercial scale, under the same conditions as in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

ARTICLE X.47

Right of information

1. Each Party shall ensure that, in the context of civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer or any other person to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

2. For the purposes of paragraph 1 "any other person" means a person who:

- (a) was found in possession of the infringing goods on a commercial scale;
- (b) was found to be using the infringing services on a commercial scale;
- (c) was found to be providing on a commercial scale services used in infringing activities;
or
- (d) was indicated by the person referred to in points (a), (b) or (c), as being involved in the production, manufacture or distribution of the goods or the provision of the services.

3. The information referred to in paragraph 1 shall, as appropriate, comprise:

- (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;

- (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.
4. Paragraphs 1 and 2 shall apply without prejudice to other laws of a Party which:
- (a) grant the right holder rights to receive fuller information;
 - (b) govern the use in civil proceedings of the information communicated pursuant to this Article;
 - (c) govern responsibility for misuse of the right of information;
 - (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit their own participation or that of their close relatives in an infringement of an intellectual property right;
 - (e) govern the protection of confidentiality of information sources or the processing of personal data.

ARTICLE X.48

Provisional and precautionary measures

1. Each Party shall ensure that its judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by the law of that Party, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. Each Party shall ensure that its judicial authorities may, at the request of the applicant, order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of their bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

4. Each Party shall ensure that its judicial authorities shall, in respect of the measures referred to in paragraphs 1, 2 and 3, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

ARTICLE X.49

Corrective measures

1. Each Party shall ensure that its judicial authorities may order, at the request of the applicant, without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction of goods that they have found to be infringing an intellectual property right or at least the definitive removal of those goods from the channels of commerce. If appropriate, under the same conditions, the judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party's judicial authorities shall have the authority to order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

ARTICLE X.50

Injunctions

Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Each Party shall also ensure that the judicial authorities may issue an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

ARTICLE X.51

Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in **Article X.49 or X.50**, may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause the person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

ARTICLE X.52

Damages

1. Each Party shall ensure that its judicial authorities, on application of the injured party, order the infringer who knowingly engaged, or had reasonable grounds to know it was engaging, in an infringing activity, to pay to the rightholder damages appropriate to the actual prejudice suffered by the rightholder as a result of the infringement.

2. Each Party shall ensure that when its judicial authorities set the damages:

- (a) they take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or
- (b) as an alternative to point (a), they may, in appropriate cases, 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.

3. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

ARTICLE X.53

Legal costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

ARTICLE X.54

Publication of judicial decisions

Each Party shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

ARTICLE X.55

Presumption of authorship or ownership

For the purposes of applying the measures, procedures and remedies provided for in Section 3:

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for the author's name to appear on the work in the usual manner; and
- (b) point (a) applies *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

ARTICLE X.56

Administrative procedures

To the extent that any civil remedy can be ordered on the merits of a case as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SUB-SECTION 3

CIVIL JUDICIAL PROCEDURES AND REMEDIES OF TRADE SECRETS

ARTICLE X.57

Civil judicial procedures and remedies of trade secrets

1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in **Article X.41(1)**, or who has access to documents which form part of those proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.
2. Each Party shall ensure that the obligation referred to in paragraph 1 remains in force after the civil judicial proceedings have ended, for as long as appropriate.
3. In the civil judicial proceedings referred to **Article X.41(1)**, each Party shall provide that its judicial authorities have the authority at least to:
 - (a) order provisional measures, in accordance with their respective laws and regulations, to cease and prohibit the use or disclosure of the trade secret in a manner contrary to honest commercial practices;
 - (b) order measures, in accordance with their respective laws and regulations, ordering the cessation of, or as the case may be, the prohibition of the use or disclosure of the trade secret in a manner contrary to honest commercial practices;
 - (c) order, in accordance with their respective laws and regulations, any person who has acquired, used or disclosed a trade secret in a manner contrary to honest commercial practices and that knew or ought to have known that he or she or it was acquiring, using

or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;

- (d) take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in proceedings as referred to in **Article X.41(1)**. Such specific measures may include, in accordance with each Party's respective laws and regulations, including the rights of defence, the possibility of restricting access to certain documents in whole or in part; of restricting access to hearings and their corresponding records or transcript; and of making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted.
 - (e) impose sanctions on any person participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.
4. Each Party shall ensure that an application for the measure, procedures or remedies provided for in this Article is dismissed where the alleged acquisition, use or disclosure of a trade secret was carried out, in accordance with its laws and regulations:
- (a) to reveal misconduct, wrongdoing or illegal activity for the purpose of protecting the general public interest;
 - (b) as a disclosure by employees to their representatives as part of, and necessary for, the legitimate exercise by those representatives of their functions;
 - (c) to protect a legitimate interest recognised by the laws and regulations of that Party.

SUB-SECTION 4

BORDER ENFORCEMENT

ARTICLE X.58

Border measures

1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications to a competent authority⁶ to suspend the release of or detain suspected goods. For the purposes of this Section, "suspected goods" means goods suspected of infringing trade marks, copyrights and related rights, geographical indications, patents, utility models, industrial designs, topographies of integrated circuits and plant variety rights.
2. Each Party shall have in place electronic systems for the management by customs of the applications granted or recorded.
3. Each Party shall ensure that its competent authorities do not charge a fee to cover the administrative costs resulting from the processing of an application or a recordation.
4. Each Party shall ensure that its competent authorities decide about granting or recording applications within a reasonable period of time.
5. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.
6. With respect to goods under customs control, each Party shall ensure that its customs authorities may act upon their own initiative to suspend the release of or detain suspected goods.

⁶ For the Union the competent authority means the customs authorities.

7. Each Party shall ensure that its customs authorities use risk analysis to identify suspected goods.

8. Each Party may authorise its customs authority to provide a right holder, upon request, with information about goods, including a description and the actual or estimated quantities thereof, and if known, the name and address of the consignor, importer, exporter or consignee, and the country of origin or provenance of the goods, whose release has been suspended, or which have been detained.

9. Each Party shall have in place procedures allowing for the destruction of suspected goods, without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, provided the persons concerned agree or do not oppose the destruction. In case suspected goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channel in a manner which avoids any harm to the right holder.

10. Each Party shall have in place procedures allowing for the swift destruction of counterfeit trade mark and pirated goods sent in postal or express couriers' consignments.

11. Each Party shall provide that, where requested by the customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the goods, including storage, handling, and any costs relating to the destruction or disposal of the goods.

12. Each Party may decide not to apply this Article to the import of goods put on the market in another country by or with the consent of the right holders. A Party may exclude from the application of this Article goods of a non-commercial nature contained in travellers' personal luggage.

13. Each Party shall allow its customs authorities to maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.

14. The Parties shall cooperate in respect of international trade in suspected goods. In particular, the Parties shall, as far as possible, share relevant information on trade in suspected goods affecting the other Party.

15. Without prejudice to other forms of cooperation, the Protocol on mutual administrative assistance in customs matters applies with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities of a Party are competent in accordance with this Article.

16. The Customs Cooperation Committee referred to in Article 20 of Chapter [...] ensures the proper functioning and implementation of this Article and provides for adequate procedures for cooperation between the competent authorities.

ARTICLE X.59

Consistency with GATT 1994 and the TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this Section, the Parties which are Parties to the WTO shall ensure consistency with their obligations under GATT 1994 and the TRIPS Agreement and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.

SECTION 4

OTHER PROVISIONS

ARTICLE X.60

Cooperation

1. With a view of facilitating the implementation of this Chapter, the Parties shall cooperate through the [Committee on Intellectual Property], international fora, relevant agencies or as otherwise deemed appropriate.

2. The areas of cooperation include, but are not limited to, the following activities:
 - (a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;

 - (b) exchange of experience on legislative progress, on the enforcement of intellectual property rights and on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;

 - (c) coordination to prevent exports of counterfeit goods, including coordination with other countries;

 - (d) technical assistance, capacity building, exchange and training of personnel;

 - (e) protection and defence of intellectual property rights and the dissemination of information in this regard in, among others, to business circles and civil society;

[Placeholder: depending on the overall institutional structure, specific provisions on the Committee on Intellectual Property to be added]