

CHAPTER 13 INTELLECTUAL PROPERTY RIGHTS

Section A General Provisions

Article 13.1 Definitions

For the purposes of this Chapter:

“**Beijing Treaty**” means the *Beijing Treaty on Audiovisual Performances* done at Beijing on 24 June 2012;

“**Berne Convention**” means the *Berne Convention for the Protection of Literary and Artistic Works* done at Berne on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979;

“**broadcasting**” means the transmission by wire or wireless means, including by cable or satellite, for public reception of images, sounds or of images and sounds or of the representations thereof, and including transmission of encrypted signals if the means for decrypting are provided to the public by the transmitting broadcasting organisation or with its consent, and “broadcast” shall be construed accordingly;

“**Budapest Treaty**” means the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* done at Budapest on 28 April 1977, as amended on 26 September 1980;

“**ccTLDs**” means country-code top level domains;

“**competent authority**” includes the appropriate judicial, administrative or law enforcement authorities under a Party’s law;

“**covered subject matter**” means each and all of the subject matter categories covered in Section G (Copyright and Related Rights), being works, performances, phonograms and broadcasts;

“**Declaration on TRIPS and Public Health**” means the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2) adopted at Doha on 14 November 2001;

“**fixation**” means the embodiment of sounds, moving images or representations thereof, in each case, from which they can be perceived, reproduced or communicated through a device;

“geographical indication” means an indication that identifies a good as originating¹ 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;

“intellectual property” refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

“Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks” means 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 WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO in 1999;

“Locarno Agreement” means the *Locarno Agreement Establishing an International Classification for Industrial Designs* done at Locarno on 8 October 1968, as amended on 28 September 1979;

“Madrid Protocol” means the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* done at Madrid on 27 June 1989, as amended on 3 October 2006 and on 12 November 2007;

“Marrakesh Treaty” means the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled* done at Marrakesh on 27 June 2013;

“Nice Agreement” means the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* done at Nice on 15 June 1957, as revised at Geneva on 13 May 1977 and amended on 28 September 1979;

“Nice Classification” means the international system for the classification of goods and services for the purpose of the registration of marks established under the Nice Agreement;

“Paris Convention” means the *Paris Convention for the Protection of Industrial Property* done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967 and as amended on 28 September 1979;

“PCT” means the *Patent Cooperation Treaty* done at Washington on 19 June 1970, as amended on 28 September 1979, and modified on 3 February 1984 and on 3 October 2001;

“performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore, and “performances” shall be construed accordingly;

¹ The definition of “originating” in Article 1.4 (General Definitions - Initial Provisions and General Definitions) shall not apply to this Chapter.

“**phonogram**” means the fixation of the sounds of a performance or of other sounds other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

“**producer of a phonogram**” means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds;

“**Rome Convention**” means the *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* done at Rome on 26 October 1961;

“**trade secret**” means information that:

- (a) 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;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

“**trade secret holder**” means any person lawfully in control of a trade secret;

“**Vienna Agreement**” means the *Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks* done at Vienna on 12 June 1973, as amended on 1 October 1985;

“**Washington Treaty**” means the *Treaty on Intellectual Property in Respect of Integrated Circuits* done at Washington on 26 May 1989;

“**WCT**” means the *WIPO Copyright Treaty*, done at Geneva on 20 December 1996;

“**WIPO**” means the World Intellectual Property Organization;

for greater certainty, “**work**” includes a cinematographic work, photographic work, and computer program; and

“**WPPT**” means the *WIPO Performances and Phonograms Treaty*, done at Geneva on 20 December 1996.

Article 13.2

Objectives

1. The objectives of this Chapter are:

- (a) that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of

producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations; and

- (b) to reduce distortion and impediments to trade and investment by promoting deeper economic integration and cooperation through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights.

Article 13.3

Principles

1. A Party may, in formulating or amending its law, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to its socio-economic and technological development, provided that those measures are consistent with the provisions of this Chapter.
2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Article 13.4

Understandings in Respect of this Chapter

1. Having regard to the underlying public policy objectives of their national systems, while recognising the different levels of economic development and capacity and differences in national legal systems, which are reflected in this Chapter, the Parties recognise the need to:
 - (a) promote innovation and creativity;
 - (b) facilitate the diffusion of information, knowledge, technology, content, culture and the arts;
 - (c) foster competition and open and efficient markets;
 - (d) maintain an appropriate balance between the rights of intellectual property right holders and the legitimate interests of users and the public interest;
 - (e) establish and maintain transparent intellectual property systems; and
 - (f) promote and maintain adequate and effective protection and enforcement of intellectual property rights to provide confidence to right holders and users,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users, and the general public.

Article 13.5

Nature and Scope of Obligations

1. Each Party affirms its rights and obligations under the TRIPS Agreement, including their commitment to the Declaration on TRIPS and Public Health. This Chapter complements and further specifies the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property to which both Parties are a party.
2. Each Party shall give effect to the provisions of this Chapter and provide in its territory to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article 13.6

Understandings Regarding TRIPS and Public Health Measures

1. The Parties recognise the preferable and optimal route to promote and ensure access to medicines is through voluntary mechanisms, such as voluntary licensing which may include technology transfer on mutually agreed terms.
2. The Parties reaffirm the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:
 - (a) the Parties affirm the right to fully use the flexibilities as duly recognised in the Declaration on TRIPS and Public Health;
 - (b) the Parties agree that this Chapter does not and should not prevent a Party from taking measures to protect public health; and
 - (c) the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all.
3. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

Article 13.7

International Agreements

1. Each Party affirms that it has ratified or acceded to the following international agreements and reaffirms its obligations under each agreement:
 - (a) Berne Convention;
 - (b) Budapest Treaty;
 - (c) Locarno Agreement;
 - (d) Madrid Protocol;
 - (e) Marrakesh Treaty;
 - (f) Nice Agreement;
 - (g) Paris Convention;
 - (h) PCT;
 - (i) Vienna Agreement;
 - (j) WCT; and
 - (k) WPPT.
2. Each Party shall give due consideration to ratifying or acceding to the Beijing Treaty if it is not already a party to that agreement.

Article 13.8

National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals² of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection³ of intellectual property rights subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, the WPPT and the Washington Treaty. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided under this Chapter.
2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to

² For the purposes of this Article, “nationals” has the same meaning as in the TRIPS Agreement.

³ For the purposes of this paragraph, “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 covered by this Chapter.

designate an address for service of process in its territory, or to appoint an agent in its territory, provided that the derogation is:

- (a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and
 - (b) not applied in a manner that would constitute a disguised restriction on trade.
3. 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.

Article 13.9

Transparency

- 1. Each Party shall endeavour to publish online its laws, regulations, procedures, and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.
- 2. Each Party shall, subject to its law, endeavour to publish online information that it makes public concerning applications for trade marks, geographical indications, registered designs, patents, and plant variety rights.^{4,5}
- 3. Each Party shall, subject to its law, publish online information that it makes public concerning registered or granted trade marks, geographical indications, designs, patents, and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.⁶

Article 13.10

Application of Chapter to Existing Subject Matter and Prior Acts

- 1. Unless otherwise provided in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

⁴ For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 13.31 (Electronic Trade Mark System) and Article 13.60 (Electronic Design System).

⁵ For greater certainty, paragraph 2 does not require a Party to publish online the entire dossier for the relevant application.

⁶ For greater certainty, paragraph 3 does not require a Party to publish online the entire dossier for the relevant registered or granted intellectual property right.

2. A Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.
3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Article. 13.11

Exhaustion of Intellectual Property Rights

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.

Article 13.12

Certain Applicants and Right Holders

A Party may provide support to certain categories of applicants and right holders such as SMEs, start-ups, or educational institutions. Support may include guidance to applicants and right holders, other initiatives, or concessions in the fee to be paid in respect of filing, processing, registration, grant and maintenance of intellectual property in accordance with the law of the Party providing that support.⁷

Section B

Cooperation

Article 13.13

Contact Points

Each Party shall designate and notify the other Party of one or more contact points for communication on all matters covered by this Chapter no later than 60 days after the date of entry into force of this Agreement.

Article 13.14

Cooperation

1. The Parties recognise the growing importance of the protection of intellectual property and shall endeavour to cooperate on the subject matter covered by this Chapter, including through appropriate coordination and exchange of information between the relevant agencies or institutions of the Parties. The areas of cooperation may include:

⁷ For the purpose of this Article, the definition of SMEs, start-ups and educational institutions would be governed by the law of the Party providing that support.

- (a) the establishment of arrangements between their respective collecting societies;
 - (b) engagement with SMEs, start-ups and educational institutions including at SME and start-up focused events and through public-private engagement with SMEs and start-ups, particularly in relation to the use, protection and enforcement of intellectual property rights;
 - (c) the exchange of information on issues of interest to SMEs and start-ups seeking intellectual property protection;
 - (d) educational and awareness campaigns relating to intellectual property rights aimed at the public and businesses;
 - (e) the exchange of information in relation to intellectual property policy and law relevant to new and emerging technologies, such as artificial intelligence and clean and green technology;
 - (f) sharing of best practices on aspects of intellectual property policy and law with the aim of supporting the development and deployment of environmentally friendly and low-emissions technologies, clean and renewable energy and enabling infrastructure, and energy-efficient goods and services;
 - (g) collaboration on best practices, projects and programmes aimed at reducing intellectual property right infringement, including:
 - (i) coordination to prevent counterfeiting and piracy of goods;
 - (ii) sharing of experience of intellectual property rights enforcement between customs, law enforcement and judicial bodies; and
 - (iii) voluntary stakeholder initiatives to reduce intellectual property right infringement, including over the internet and other marketplaces;
 - (h) capacity-building and technical assistance, particularly in relation to intellectual property administration and registration systems, reducing intellectual property right infringement and improving enforcement of intellectual property rights; and
 - (i) the exchange of information on developments in domestic and international intellectual property policy, including policies involving the use of intellectual property for research, innovation and economic growth.
2. In addition, the Parties shall endeavour to cooperate in relation to activities for improving the international intellectual property regulatory framework, including by:
- (a) fostering international harmonisation, administration and enforcement of intellectual property rights; and

- (b) working together at the WTO and WIPO on relevant activities including in relation to relevant multilateral intellectual property agreements.
- 3. The Parties shall cooperate and share best practices on legal protection and effective legal remedies against the unauthorised circumvention of technological protection measures, which includes the manufacturing and trafficking of devices that may be used for the circumvention of any effective technological measures.

Article 13.15

Working Group on Intellectual Property Rights

- 1. The Parties hereby establish a Working Group on Intellectual Property Rights composed of government representatives of each Party. The Working Group may also invite experts to attend meetings and advise the Working Group on any matter falling within its functions.
- 2. The Working Group may meet physically or virtually, as agreed by the Parties.
- 3. Without prejudice and as a complement to Article 13.14 (Cooperation), the Working Group shall:
 - (a) review and monitor the implementation and operation of this Chapter;
 - (b) discuss issues pertaining to the protection and enforcement of intellectual property rights and the promotion of efficient and transparent administration of intellectual property systems, and exchange information relating to intellectual property rights matters under this Chapter, including how intellectual property protection contributes to innovation, creativity, economic growth and employment;
 - (c) report its findings and the outcomes of its discussions to the Joint Committee;
 - (d) carry out other functions as may be delegated by the Joint Committee; and
 - (e) carry out the functions specified in Article 13.39 (Modifications to the List of Protected Geographical Indications).
- 4. Without prejudice to other provisions under this Chapter, the Working Group shall meet within one year of the date of entry into force of this Agreement and thereafter annually if requested by either Party.

Article 13.16
Patent Cooperation and Work Sharing

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems, simplifying and streamlining the procedures and processes of their respective patent offices, and promoting transparent systems, to the benefit of all users of the patent system and the public as a whole.
2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of the Parties, which may include cooperating under the WIPO CASE system administered by the World Intellectual Property Organisation, and also exchanging information on quality assurance systems and quality standards relating to patent examination.
3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to share best practices to reduce differences in the procedures and processes of their respective patent offices.

Article 13.17
Cooperation on Collective and Certification Marks

1. Under the Working Group on Intellectual Property Rights, the Parties shall exchange general information on the registration and protection of India's Geographical Indications listed in Annex 13C (Geographical Indications for Goods Other than Wines, Spirits, Agricultural Products, and Foodstuffs Protected in India as Goods of Handicrafts, Natural Goods and Manufactured Goods) as collective or certification marks under the United Kingdom's trade mark system.
2. The United Kingdom shall promote to producers in India the use of collective or certification marks under the United Kingdom's trade mark system, as a means of protecting geographical indications for goods other than wines, spirits, agricultural products, and foodstuffs.

Article 13.18
Cooperation on Trade Marks

The Parties recognise the importance of improving the quality and efficiency of their respective trade mark systems and shall cooperate and engage in general discussions relating to that subject.

Article 13.19
Cooperation on Geographical Indications

The Parties shall cooperate and exchange general information to gain a better understanding of each other's *sui generis* systems for the protection of geographical indications, in their territories, for wines, spirits, agricultural products, and foodstuffs, and, in particular, the relationship between those systems and the protection of prior trade marks.

Article 13.20
WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

The Parties affirm their commitment to work together through discussion and by the exchange of information at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

Article 13.21
Cooperation in the Area of Traditional Knowledge Associated with Genetic Resources

1. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with genetic resources and traditional knowledge associated with genetic resources.
2. The Parties shall endeavour to pursue quality patent examination, which shall include:
 - (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
 - (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources; and
 - (c) the use of databases or digital libraries containing genetic resources and associated traditional knowledge, such as India's Traditional Knowledge Digital Library,⁸ if reasonably accessible, applicable and appropriate.

⁸ As owned and maintained by the Government of the Republic of India.

Article 13.22
Cooperation on Transfer of Technology

1. The Parties agree to exchange views and information on their practices and policies affecting the voluntary transfer of technology. This may include measures to facilitate information flows, business partnerships, licensing and subcontracting deals, on a voluntary basis.
2. With respect to the transfer of technology, the Parties shall ensure that the legitimate interests of intellectual property right holders are protected.

Article 13.23
Cooperation on Request

Cooperation activities undertaken under this Chapter may be initiated on request of either Party, are subject to the availability of resources of each Party, and on terms and conditions mutually decided upon between the Parties. The Parties affirm that cooperation under this Section is additional to and without prejudice to other past, ongoing and future cooperation activities, both bilateral and multilateral, between the Parties, including between their respective intellectual property offices.

Section C
Trade Marks

Article 13.24
Types of Signs Registrable as Trade Marks

1. A Party may require, as a condition of registration as a trade mark, that a sign be visually perceptible. A Party may also require, as a condition of registration as a trade mark, a concise and accurate description, or graphical representation, or both, of the trade mark.
2. Where a sign is not inherently capable of distinguishing the goods or services of one undertaking from those of other undertakings, a Party may make registrability as a trade mark dependent on distinctiveness acquired through use.

Article 13.25
Rights Conferred

Each Party shall provide that the owner of a registered trade mark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trade mark is registered where that use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall

not prejudice any existing prior rights, nor shall they affect the possibility of each Party making rights available on the basis of use.

Article 13.26

Exceptions

A Party may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interests of the owner of the trade mark and of third parties.

Article 13.27

Well-Known Marks

1. Each Party shall provide for the protection of well-known trade marks as referred to in Article *6bis* of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement.
2. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks.
3. No Party shall require, as a condition for determining that a trade mark is well-known, that the trade mark has been registered in the Party or in another jurisdiction.

Article 13.28

Bad Faith Applications

Each Party shall provide, in accordance with its law, that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trade mark was made in bad faith.

Article 13.29

Classification of Goods and Services

1. Each Party shall provide that:
 - (a) registrations and published applications for trade marks indicate the goods and services by their names, grouped according to the classes established by the Nice Classification; and
 - (b) goods or services may not be considered as being similar to each other on the ground that, in any application for a trade mark, including any published application, or registration of a trade mark, they are classified in the same class of the Nice Classification. Conversely, each Party shall

provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any application for a trade mark, including any published application, or registration of a trade mark, they are classified in different classes of the Nice Classification.

Article 13.30

Procedural Aspects of Examination, Opposition and Cancellation

1. Each Party shall provide a system for the examination and registration of trade marks that includes:
 - (a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trade mark;
 - (b) providing the applicant with an opportunity to respond to communications from the competent authority, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trade mark;
 - (c) providing an opportunity to oppose an application for the registration of a trade mark and an opportunity to seek a decision that the trade mark should not have been registered through, at a minimum, administrative procedures; and
 - (d) requiring decisions in administrative procedures referred to in subparagraph (c) to be reasoned and in writing, which may be by electronic means.

Article 13.31

Electronic Trade Mark System

1. Each Party shall provide:
 - (a) a system for the electronic application for, and the renewal of, trade marks; and
 - (b) a publicly available electronic information system, including an online database, of trade mark applications and of registered trade marks.

Article 13.32

Term of Protection

Each Party shall provide that initial registration and each renewal of registration of a trade mark is for a term of no less than 10 years.

Article 13.33
Domain Names

1. In connection with each Party's system for the management of its ccTLD domain names, the Parties recognise the benefits of appropriate remedies being available in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trade mark.
2. The Parties understand that these remedies may include, among other things, revocation, cancellation, transfer, damages or injunctive relief.

Section D
Geographical Indications

Article 13.34
Scope

1. This Section applies to the protection of geographical indications in the territories of the Parties for wines, spirits, agricultural products, and foodstuffs, through a *sui generis* system.
2. The Parties acknowledge that a Party may protect geographical indications for categories of goods other than wines, spirits, agricultural products, and foodstuffs, which may include handicrafts, natural goods and manufactured goods, through a *sui generis* or trade mark system, or other legal means.⁹

Article 13.35
System for the Protection of Geographical Indications

1. Each Party shall maintain a system for the protection of geographical indications in its territory.
2. The system referred to in paragraph 1 shall contain at least the following elements:
 - (a) a public register listing geographical indications protected in the territory of the Party;
 - (b) an administrative process of examination to verify that a geographical indication to be registered as referred to in subparagraph (a) identifies a good as originating in the territory, region or locality where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

⁹ The categories of goods protected by a Party under a *sui generis* or trade mark system, or other legal means, shall be determined by each Party in accordance with its law.

- (c) a requirement that a geographical indication shall correspond to a specific good or goods for which a specification is laid down which may only be amended by due administrative processes;
- (d) an opposition procedure that allows the legitimate interests of third parties to be taken into account;
- (e) legal provisions providing that a protected geographical indication may be used by a person marketing, trading or dealing in a relevant good if the good conforms to the corresponding specification; and
- (f) a procedure for the cancellation of the protection of a protected geographical indication, taking into account the legitimate interests of third parties and the users of the geographical indication in question.

Article 13.36

Initial Geographical Indications Submitted for Protection

Where, prior to the date of entry into force of this Agreement, the Parties have drawn up a list of geographical indications that may be submitted for protection under this Section, the Parties may agree, under the auspices of the Working Group on Intellectual Property Rights, that the geographical indications set out in that list shall be submitted for protection under this Section in accordance with Article 13.38 (Procedures for Geographical Indications Submitted for Protection).

Article 13.37

Additional Geographical Indications Submitted for Protection

1. Where a Party intends to seek protection for an additional geographical indication or a list of additional geographical indications of that Party in the territory of the other Party under this Section, the Parties shall enter into consultations under the auspices of the Working Group on Intellectual Property Rights with a view to agreeing whether the additional geographical indication or geographical indications shall be submitted for protection under this Section.
2. Where the Parties have so agreed under paragraph 1, the geographical indication or geographical indications shall be submitted for protection under this Section in accordance with Article 13.38 (Procedures for Geographical Indications Submitted for Protection).

Article 13.38

Procedures for Geographical Indications Submitted for Protection

1. Where the Parties have submitted, under Article 13.36 (Initial Geographical Indications Submitted for Protection) or paragraph 2 of Article 13.37

(Additional Geographical Indications Submitted for Protection), a geographical indication for protection under this Section:

- (a) the Party seeking protection of the geographical indication shall, under the auspices of the Working Group on Intellectual Property Rights, ensure that the other Party has been provided with the name of the geographical indication and its corresponding specification. The specification shall include the information listed in Annex 13A (Geographical Indication Specification), and where applicable, a translation into English; and
 - (b) the other Party shall, within a reasonable period of time after the receipt of the information and documentation in subparagraph (a), complete the examination of the geographical indication in accordance with its domestic requirements.
2. Where a geographical indication has passed the examination procedure for the other Party, the other Party shall complete the opposition procedures required pursuant to its domestic requirements without undue delay.¹⁰
3. Each Party shall, through the contact points referred to in Article 13.13 (Contact Points), inform the other Party of the progress of any examination or opposition procedure conducted pursuant to subparagraph 1(b) and paragraph 2 and shall promptly notify the other Party of any objection made under that opposition procedure to any geographical indication submitted for protection under this Section pursuant to Article 13.36 (Initial Geographical Indications Submitted for Protection) or paragraph 2 of Article 13.37 (Additional Geographical Indications Submitted for Protection).
4. A Party shall, through the contact points referred to in Article 13.13 (Contact Points), consult the other Party if, in accordance with its domestic requirements, further information is required from the other Party in order to conduct the examination and opposition procedures conducted pursuant to subparagraph 1(b) and paragraph 2.
5. Following the examination and opposition procedures conducted pursuant to subparagraph 1(b) and paragraph 2, if an application for protection of a geographical indication under this Section is rejected, the examining Party shall, under the auspices of the Working Group on Intellectual Property Rights, provide the other Party with the reasons for the refusal and exchange information regarding refusal of the application.
6. For the purpose of protection of a geographical indication under this Section pursuant to Article 13.36 (Initial Geographical Indications Submitted for Protection) or paragraph 2 of Article 13.37 (Additional Geographical Indications Submitted for Protection), a Party may require that a public

¹⁰ For greater certainty, any delay to an opposition procedure caused by factors outside of the control of a Party shall not constitute an undue delay.

authority recognised¹¹ by the other Party or an accredited product certification body has verified that goods using the name of that geographical indication conform to the corresponding specification.

7. Each Party shall ensure that each geographical indication that Party submits for protection under this Section pursuant to Article 13.36 (Initial Geographical Indications Submitted for Protection) or paragraph 2 of Article 13.37 (Additional Geographical Indications Submitted for Protection) is protected in its territory under the system referred to in Article 13.35 (System for the Protection of Geographical Indications).

Article 13.39 **Modifications to the List of Protected Geographical Indications**

1. Subject to paragraph 2, where a geographical indication has been examined and passed the opposition procedure in the other Party under its domestic requirements, the Working Group on Intellectual Property Rights shall make a recommendation to the Joint Committee to modify, pursuant to subparagraph 2(g) of Article 27.2 (Functions of the Joint Committee – Administrative and Institutional Provisions), the list of protected geographical indications in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) to add the name of that geographical indication.
2. The Parties shall aim for an equitable number of geographical indications of each Party to be listed in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs). In this respect, the Working Group on Intellectual Property Rights shall consider whether it is appropriate to delay making a recommendation to the Joint Committee to modify, pursuant to subparagraph 2(g) of Article 27.2 (Functions of the Joint Committee – Administrative and Institutional Provisions), Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs), to allow a recommendation to be made in respect of a tranche of geographical indications and to ensure a mutually satisfactory number of geographical indications of both Parties can be added to Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs).
3. The list of protected geographical indications in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) may be modified to remove geographical indications, in particular where a geographical indication ceases to be protected in the territory of the Party of origin. The Working Group on Intellectual Property Rights may decide to make a recommendation to the Joint Committee to modify, pursuant to subparagraph 2(g) of Article 27.2 (Functions of the Joint Committee – Administrative and Institutional Provisions), the list of protected geographical

¹¹ The Parties agree that where the law of a Party provides for a system of registered proprietors of geographical indications, and such registered proprietor is considered a public authority by that Party, it shall have the authority to conduct the verification for the purposes of this paragraph.

indications in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) to remove a geographical indication.

Article 13.40

Lists of Protected Geographical Indications

1. The United Kingdom shall protect the geographical indications of India listed in Part 1 of Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) in accordance with this Section and its law, those geographical indications having been protected in India under the system referred to in Article 13.35 (System for the Protection of Geographical Indications) and subsequently having been examined and having completed and passed an opposition procedure in the United Kingdom under its domestic requirements.
2. India shall protect the geographical indications of the United Kingdom listed in Part 2 of Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) in accordance with this Section and its law, those geographical indications having been protected in the United Kingdom under the system referred to in Article 13.35 (System for the Protection of Geographical Indications) and subsequently having been examined and having completed and passed an opposition procedure in India under its domestic requirements.
3. Annex 13C (Geographical Indications for Goods Other than Wines, Spirits, Agricultural Products, and Foodstuffs Protected in India as Goods of Handicrafts, Natural Goods and Manufactured Goods) contains a list of geographical indications for goods other than wines, spirits, agricultural products, and foodstuffs protected in India. Applications for the protection of the geographical indications relating to these goods may be submitted under the United Kingdom's trade mark system.
4. For the purposes of this Section, the date of protection of a geographical indication is the date that the modification of Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs), made pursuant to paragraph 1 of Article 13.39 (Modifications to the List of Protected Geographical Indications), listing the geographical indication is adopted.

Article 13.41

Scope of Protection of Geographical Indications

1. Having regard to the Parties' respective levels of domestic protection, each Party shall, in respect of the geographical indications protected under this Section, protect as a minimum against:

- (a) use of such geographical indications by any means in the designation or presentation of goods that indicates or suggests that those goods originate in a geographical area other than the true place of origin of those goods in a manner which misleads the public as to the geographical origin of those goods, and the use of such a geographical indications in respect of goods originating in the relevant geographical area but not conforming with the corresponding specification of the geographical indication under this Section;
 - (b) any other use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention; and
 - (c) any use of a geographical indication, which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.¹²
- 2. Neither Party shall be required to protect a name as a geographical indication under this Section if that name:
 - (a) conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead consumers as to the true origin of the good; or
 - (b) is the term customary in common language as the common name for the good concerned in the territory of that Party.
- 3. Neither Party shall be required to protect a name as a geographical indication under this Section if, in light of a prior trade mark or pending application for registration of a trade mark, a Party's law would prevent protection of the geographical indication.
- 4. The Parties shall:
 - (a) as soon as reasonably practicable, but no later than one year after the date of entry into force of this Agreement, enter into consultations under the auspices of the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights), to review paragraph 3;
 - (b) agree a timetable for further consultation at an initial meeting held as soon as reasonably practicable, but no later than one year after the date of entry into force of this Agreement, or alternatively agree as soon as reasonably practicable, but no later than one year after the date of entry into force of this Agreement not to enter into further consultations;
 - (c) where such further consultations are entered into, review paragraph 3 with a view to amending it in the light of any relevant changes that may have occurred in the laws and regulations of the United Kingdom in

¹² For greater certainty, nothing in this Article prevents either Party from providing additional protection in accordance with domestic requirements under the Party's law.

consequence of the United Kingdom's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership done at Santiago on 8 March 2018; and

- (d) where such further consultations are entered into, use reasonable endeavours to complete the review of paragraph 3 in a timely manner.
- 5. Nothing in this Agreement 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 consumers.
- 6. Each Party shall decide the practical conditions of use 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.
- 7. If a Party ("Party A") intends to consider the protection of a geographical indication of a non-Party, either pursuant to an international agreement or through its domestic system of protection referred to in Article 13.35 (System for the Protection of Geographical Indications), which is homonymous with a geographical indication of the other Party ("Party B") protected under this Section, Party A shall inform, no later than on the date of the publication for opposition of that geographical indication, Party B of the opportunity to comment, provided that the date of publication for opposition is after the date of entry into force of this Agreement.
- 8. Nothing in this Chapter 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 law of the other Party. Each Party shall promptly notify the other Party if a geographical indication protected under this Section ceases to be protected in the territory of the Party of origin.
- 9. The Parties shall provide that geographical indications protected under this Section shall be protected through a *sui generis* system.

Article 13.42 **Right of Use of Geographical Indications**

- 1. Each Party shall provide that a person may use a geographical indication protected under this Section provided that such use is in accordance with the requirements under the law of the Party in which the geographical indication is protected.
- 2. Where a Party has a renewal requirement with respect to geographical indications under its law, both Parties shall ensure that the renewal process is

streamlined and timely.¹³ At least six months and no more than a year prior to the date of renewal, the Party requiring renewal shall notify the other Party of the need to fulfil its domestic requirements concerning renewal.

3. Upon receipt of this notification, the other Party shall, at least three months prior to the date of renewal, apply for renewal in accordance with the domestic requirements of the notifying Party.
4. For the purpose of the renewal of protection of a geographical indication under this Article, the date of renewal shall be calculated from the date of application for protection of a geographical indication, as referred to in paragraph 3 of Article 13.43 (Relationship with Trade Marks).

Article 13.43

Relationship with Trade Marks

1. Each Party shall, in accordance with its law, refuse to register or shall invalidate a trade mark in respect of a geographical indication protected under this Section, provided that an application for registration of the trade mark is submitted after the date of application for protection of the geographical indication in the territory concerned.
2. Each Party shall ensure that the protection of a geographical indication under this Section is without prejudice to the continued use of a trade mark which, in good faith, has been applied for, registered or established by use, if that possibility is provided for by the law, in the territory of a Party before the date of the application for protection of the geographical indication. A prior trade mark may continue to be used and renewed for that good notwithstanding the protection of the geographical indication provided that no grounds for the trade mark's invalidity or revocation exist in the laws and regulations of the Party concerned.
3. For the purposes of this Section, the date of application for protection of a geographical indication listed in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) shall be:
 - (a) for a geographical indication submitted for protection under this Section pursuant to Article 13.36 (Initial Geographical Indications Submitted for Protection), the date of entry into force of this Agreement; or
 - (b) for a geographical indication submitted for protection under this Section pursuant to paragraph 2 of Article 13.37 (Additional Geographical Indications Submitted for Protection), the date of the other Party's receipt of information and documentation provided in paragraph 1(a) of

¹³ For greater certainty, the purpose of a streamlined and timely process is to ensure that renewal procedures are conducted without undue delay, as clarified in footnote 10.

Article 13.38 (Procedures for Geographical Indications Submitted for Protection).

Article 13.44

Enforcement of Protection

1. Each Party shall require its competent authorities to take appropriate measures, in accordance with its laws and regulations, *ex officio* or on request of an interested party, to protect the geographical indications listed in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) pursuant to this Section.
2. Each Party shall designate and notify the other Party of a contact point for matters concerning enforcement of geographical indications under this Section in their respective territories. A Party and any interested person of that Party may seek guidance on the operation of the other Party's enforcement system through that contact point. The contact point shall provide relevant information relating to the enforcement matter raised, and alternative contact details, where appropriate, to that Party or its interested person. Each Party shall provide the other Party with up to date contact information of the designated contact point under this Section.

Article 13.45

Consultations on the Protection of Geographical Indications

1. The Parties shall, following entry into force of this Agreement, enter into consultations to review this Section if:
 - (a) after the date of entry into force of this Agreement an international agreement enters into force between a Party and a non-Party that grants any substantive advantage, favour, privilege or immunity with regard to the protection of geographical indications for wines, spirits, agricultural products, or foodstuffs that is not granted by this Agreement; or
 - (b) after this Agreement has been signed by the Parties, a Party adopts any substantive change to the protection of geographical indications for wines, spirits, agricultural products, or foodstuffs provided under the *sui generis* system for the protection of geographical indications in effect in that Party's territory on the date of signature of this Agreement by the Parties.
2. The Parties shall, following entry into force of this Agreement, enter into consultations to review this Section if:
 - (a) after the date of entry into force of this Agreement an international agreement enters into force between the United Kingdom and a non-Party that includes obligations to introduce a *sui generis* system for the

protection of categories of goods other than wines, spirits, agricultural products, or foodstuffs in the United Kingdom; or

- (b) after this Agreement has been signed by the Parties, the United Kingdom adopts a *sui generis* system for the protection of categories of goods other than wines, spirits, agricultural products, or foodstuffs in the United Kingdom.
- 3. The relevant Party shall promptly notify the other Party, through the contact points referred to in Article 13.13 (Contact Points), if any of the events or changes described in paragraph 1 or 2 occur and provide any relevant information in relation to that event or change to the other Party.
- 4. If an event or change described in paragraph 1 or 2 occurs, the Parties shall:
 - (a) enter into consultations under the auspices of the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights) as soon as reasonably practicable after the relevant event or change in paragraph 1 or 2 has taken place, and in any event no later than one year after the date of that event or change;¹⁴
 - (b) agree a timetable for further consultations at an initial meeting held within the timeframe specified in subparagraph (a), or alternatively agree within the timeframe specified in subparagraph (a) not to enter into further consultations;
 - (c) where further consultations are entered into, review this Section with a view to amending this Agreement so that this Section grants no less favourable treatment than the protection granted by:
 - (i) the international agreement referred to in subparagraph 1(a) or 2(a);
 - (ii) the substantive change to protection referred to in subparagraph 1(b); or
 - (iii) the *sui generis* system referred to in subparagraph 2(b); and
 - (d) where further consultations are entered into, use reasonable endeavours to complete a review under this Article in a timely manner.
- 5. Within three years of the date of entry into force of this agreement if the United Kingdom has not entered into consultations under paragraph 2, the United Kingdom shall initiate a review of its laws and regulations relating to the protection, as intellectual property, of geographical indications in relation to categories of goods other than wines, spirits, agricultural products, or

¹⁴ Where the relevant change in subparagraph 1(b) or 2(b) has taken place before entry into force of this Agreement, the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement and, in any event, no later than one year after the date of entry into force of this Agreement.

foodstuffs. The United Kingdom shall complete the review in a timely manner and communicate the outcome of this review to India through the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights).

Section E Patents

Article 13.46 Rights Conferred

1. Each Party shall provide that a patent confers on its owner the following exclusive rights:
 - (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing¹⁵ for these purposes that product; and
 - (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
2. Each Party shall also provide that a patent owner has the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 13.47 Patentable Subject Matter

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application.¹⁶ Subject to paragraph 3, each Party shall make patents available and patent rights enjoyable without discrimination as to the place of invention, the field of technology, and whether products are imported or locally produced.
2. A Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that the exclusion is not made merely because the exploitation is prohibited by its law.

¹⁵ This right, like all other rights conferred in this Chapter in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 13.11 (Exhaustion of Intellectual Property Rights).

¹⁶ For the purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful" respectively.

3. A Party may also exclude from patentability:
 - (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and
 - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

Article 13.48 Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that those exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 13.49 Regulatory Review Exception

1. Without prejudice to the scope of, and consistent with, Article 13.48 (Exceptions), each Party:
 - (a) shall provide that a third party may do an act that would otherwise infringe a patent with respect to a pharmaceutical product invention if the act is done for purposes connected with obtaining regulatory approval¹⁷ in that Party or another country or both; and
 - (b) may provide that a third person may do an act that would otherwise infringe a patent with respect to all other types of invention if the act is done for purposes connected with obtaining regulatory approval in that Party or another country or both.

Article 13.50 Other Use Without Authorisation of the Right Holder

The Parties understand that nothing in this Chapter shall limit a Party's rights and obligations under the TRIPS Agreement to authorise the use of a patent without the authorisation of the right holder.

¹⁷ For the purposes of Article 13.49, a Party may treat "regulatory approval" to mean "marketing approval".

Article 13.51
Amendments, Corrections and Observations

1. Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections, and observations in connection with its application, in accordance with their laws and regulations.
2. Neither Party shall revoke or invalidate a patent, either totally or in part, without the patent owner being given the opportunity to make observations on the intended revocation or invalidation, and to make amendments and corrections where permitted under a Party's law.
3. A Party may provide that amendments made pursuant to paragraph 1 or 2 do not go beyond the scope of the disclosure of the invention, as of the filing date.

Article 13.52
Publication of Patent Applications

1. Recognising the benefits of transparency in the patent system, each Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.
2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application, or the corresponding patent, as soon as practicable.
3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

Article 13.53
Information Relating to Published Patent Applications and Granted Patents

1. For published patent applications and granted patents, and in accordance with the Party's requirements for the prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that the information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement:
 - (a) examination reports generated for an application, including details of, or information related to, relevant prior art searches;
 - (b) as appropriate, non-confidential communications from applicants; and
 - (c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

Article 13.54
Conditions on Patent Applicants

1. Each Party shall require an applicant for a patent to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of application.
2. A Party may require a patent applicant to provide information concerning the applicant's corresponding foreign application and grants. A mere failure to comply with this requirement shall not result in revocation of or refusal to grant a patent, except where the competent authority determines there is deliberate or wilful suppression of information.
3. The patent granting authority may give due consideration to information concerning the applicant's corresponding foreign application and grants which is publicly available or otherwise available to the granting authority, during the patent application process.

Article 13.55
Opposition Proceedings

1. Where a Party provides for a process that allows a third party to oppose a patent application prior to its grant, it shall ensure that this opposed patent application is processed and disposed of within a reasonable period of time and without undue delay.
2. A Party which allows a third party to oppose a patent application prior to its grant shall, subject to its law, adopt¹⁸ measures in support of paragraph 1.¹⁹

Article 13.56
Patent Working Disclosure Requirement

1. Neither Party shall require a patent owner to provide annual disclosure of information concerning the working of a patent. Where a Party provides for periodic disclosure of information concerning the working of a patent, the periodicity shall not be less than three years and confidential information

¹⁸ A Party is able to meet this obligation by adopting measures between 23 September 2023 and the date of entry into force of this Agreement.

¹⁹ For the avoidance of doubt, the measures adopted by a Party shall be determined at its discretion. These measures may include an expedited route for the disposal of opposed patent applications.

contained in the disclosure shall not be made available in the public domain, other than in exceptional circumstances.²⁰

2. Notwithstanding paragraph 1, a Party may require a patent owner to provide a disclosure concerning the working of a patent, in a given case, in accordance with its law.
3. Pursuant to paragraphs 1 and 2, failure to disclose information concerning the working of a patent shall not result in imprisonment.

Section F Designs

Article 13.57 Protection of Registered Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer an exclusive right upon the owner of the registered industrial design in accordance with this Article.
2. A Party may provide limited exceptions to the protection of registered industrial designs, provided that those exceptions do not unreasonably conflict with the normal exploitation of registered industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the registered industrial design, taking account of the legitimate interests of third parties.
3. Each Party shall ensure that an owner of a registered industrial design has at least the right to prevent third parties not having the owner's consent from making, offering, selling, or importing an article or product bearing or embodying the registered industrial design which is a copy, or substantially a copy, of the registered industrial design, where those acts are undertaken for commercial purposes.

Article 13.58 Duration of Protection

Each Party shall ensure that the total term of protection available for registered industrial designs is no less than 15 years.

²⁰ A Party may determine what constitutes an exceptional circumstance.

Article 13.59
Multiple Design Applications

A Party may allow for two or more industrial designs to be registered through the filing of one application, in accordance with its law.

Article 13.60
Electronic Design System

1. Each Party shall provide a:
 - (a) system for the electronic application for, and renewal of, registered industrial designs; and
 - (b) publicly available electronic information system, which must include an online database of registered industrial designs.

Article 13.61
Unregistered Designs

A Party may provide, in accordance with its law, that unregistered designs may be protected. The extent to which, and the conditions under which, that protection is conferred, including the level of originality required, shall be determined by each Party.

Section G
Copyright and Related Rights

Article 13.62
Authors

1. Each Party shall provide authors with the exclusive right to authorise or prohibit the:
 - (a) direct or indirect reproduction in any manner or form, in whole or in part, of their works;
 - (b) distribution to the public, by sale or otherwise, of the original and copies²¹ of their works;
 - (c) communication to the public²² of their works, by wire or wireless means, including broadcasting and the making available to the public of their

²¹ The expressions “copies” and “original and copies”, that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

²² For the purposes of this Article, “communication to the public” shall be construed in accordance with Article 8 of the WCT.

works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

- (d) commercial rental to the public of their works in respect of at least computer programs and cinematographic works.

Article 13.63

Performers

1. Each Party shall provide performers with the exclusive right to authorise or prohibit the:
 - (a) fixation of their unfixed performances;
 - (b) direct or indirect reproduction in any manner or form, in whole or in part of fixations of their performances;
 - (c) distribution to the public, by sale or otherwise, of the original and copies of fixations of their performances;
 - (d) 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) broadcasting and the communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
 - (f) commercial rental to the public of fixations of their performances.

Article 13.64

Producers of Phonograms

1. Each Party shall provide producers of phonograms with the exclusive right to authorise or prohibit the:
 - (a) direct or indirect reproduction in any manner or form, in whole or in part, of their phonograms;
 - (b) distribution to the public, by sale or otherwise, of the original or copies of their phonograms;
 - (c) 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; and
 - (d) commercial rental to the public of their phonograms.

Article 13.65
Broadcasting Organisations

1. Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit the:
 - (a) fixation of their broadcasts;
 - (b) direct or indirect reproduction in any manner or form, in whole or in part, of fixations of their broadcasts;
 - (c) distribution to the public, by sale or otherwise, of fixations of their broadcasts;
 - (d) rebroadcasting of their broadcasts; and
 - (e) communication to the public of their broadcasts if that communication is made against payment of an entrance fee. A Party may determine the conditions under which this exclusive right may be exercised.

Article 13.66
Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes

1. The Parties acknowledge the importance of performers and producers of phonograms receiving equitable remuneration when their phonograms published for commercial purposes are used for broadcasting or for any communication to the public.²³
2. The Parties shall cooperate and discuss measures with a view to facilitating equitable remuneration for performers and producers of phonograms.

Article 13.67
Artist's Resale Right

1. Each Party shall provide, for the benefit of the author of an original work of 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 Parties shall engage in discussions as soon as reasonably practicable, after the date of entry into force of this Agreement, for the establishment of a well-

²³ For the purposes of this Article, "communication to the public" does not include the making available to the public of a phonogram, 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.

functioning and effective mechanism to enable the author of an original work of art and their beneficiaries to receive royalties.

3. Nothing in this Article shall require a Party to provide an artist's resale right for authors and their beneficiaries of the other Party on a reciprocal basis, until the mechanism as referred in paragraph 2 has been established to the satisfaction of each Party.

Article 13.68 **Limitations and Exceptions**

1. A Party may provide limitations or exceptions in its law to the rights provided for in this Section, but shall confine those limitations or exceptions to certain special cases that do not conflict with a normal exploitation of covered subject matter, and do not unreasonably prejudice the legitimate interests of the right holder.
2. This Article is without prejudice to the scope of applicability of the limitations and exceptions to any rights permitted by the TRIPS Agreement and WIPO administered treaties to which a Party is party.

Article 13.69 **Term of Protection**

1. Each Party shall provide that the rights of an author of a work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for no less than 60 years after the author's death.²⁴
2. In the case of a work of joint authorship, each Party shall provide that the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. Where the term of protection of a work is not determined by reference to the life of a natural person, each Party shall provide that the term of protection shall run for no less than 60 years from when the work was first lawfully made available to the public.²⁵
4. Each Party shall provide that the rights of broadcasting organisations shall run for no less than 25 years from the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

²⁴ For India, notwithstanding paragraph 1, the rights of a producer of cinematographic work shall run for 60 years from when the cinematographic work was first lawfully published in accordance with the Party's law.

²⁵ For the United Kingdom, this only applies to works made available to the public within 70 years from creation.

5. Each Party shall provide that the rights of performers for their performances shall run for no less than 50 years from making of the performance.
6. Each Party shall provide that the rights of producers of phonograms shall run for no less than 60 years from when the phonogram was first lawfully published or made available to the public.²⁶
7. Each Party shall provide that the terms laid down in this Article shall be calculated from the beginning of the calendar year following the event.
8. A Party may provide for longer terms of protection than those provided for in this Article.
9. Within three years of the entry into force of this Agreement, if the Parties have not entered into consultations for review pursuant to paragraph 10, India shall commence an internal domestic review in a timely manner for increasing the term of protection of works, performances, phonograms and broadcasts. India shall complete the review within a reasonable period of time and communicate the findings of this domestic review to the United Kingdom through the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights).
10. The Parties shall, following entry into force of this Agreement, enter into consultations to review this Article if:
 - (a) after this Agreement has been signed by the Parties India introduces a legislative change increasing the term of protection provided under this Article; or
 - (b) after the date of entry into force of this Agreement, an international agreement enters into force between India and a non-Party that includes obligations to increase any term of protection provided under this Article.
11. If an event or change described in paragraph 10 occurs, the Parties shall:
 - (a) enter into consultations under the auspices of the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights) as soon as reasonably practicable after the relevant event or change in paragraph 10 has taken place, and in any event no later than one year after the date of that event or change;²⁷

²⁶ For the United Kingdom, this only applies to phonograms lawfully published or made available to the public within 50 years from fixation.

²⁷ Where the relevant change in paragraph 10(a) has taken place before the date of entry into force of this Agreement, the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement and, in any event, no later than one year after the date of entry into force of this Agreement.

- (b) where these consultations are entered into, review this Article with a view to increasing the term of protection following:
 - (i) the legislative change referred to in subparagraph 10(a); or
 - (ii) the international agreement(s) referred to in subparagraph 10(b); and
- (c) following these consultations, complete the review under this Article in a timely manner.

Article 13.70

Collective Rights Management

1. The Parties shall endeavour to promote cooperation between the collective management organisations established in their respective territories for the purpose of facilitating licensing of content between the Parties, as well as encouraging the transfer of rights revenue between the respective collective management organisations for the use of that content.
2. Each Party shall endeavour to promote the transparency of collective management organisations established in their respective territories, particularly in relation to the collection of rights revenues, the deductions they make from the rights revenue collected, their distribution policies and the repertoire they represent.
3. Each Party shall endeavour to promote the non-discriminatory treatment by collective management organisations of right holders these organisations represent either directly or via another collective management organisation.
4. Each Party shall encourage collective management organisations established in its territory to regularly, diligently and accurately distribute amounts due to represented collective management organisations in a timely manner.

Article 13.71

Technological Protection Measures

1. Each Party shall provide adequate legal protection and effective legal remedies against the unauthorised circumvention of effective technological measures that are used in connection with the exercise of rights provided under this Section and that restrict acts which are not authorised by the right holders concerned or permitted by the Party's law.
2. A Party may take appropriate measures, as necessary, to ensure that the protection afforded in accordance with this Article shall not prevent beneficiaries of exceptions or limitations provided for in accordance with Article 13.68 (Limitations and Exceptions) from enjoying those exceptions or limitations.

Article 13.72
Rights Management Information

1. 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 having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of covered subject matter:
 - (a) to remove or alter any electronic rights management information; or
 - (b) to distribute, import for distribution, broadcast, communicate, or make available to the public covered subject matter, knowing that electronic rights management information has been removed or altered without authority.
2. For greater certainty, this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article 13.68 (Limitations and Exceptions) from enjoying those limitations or exceptions.
3. For the purposes of this Article, “rights management information” means:
 - (a) information that identifies covered subject matter, the author, performer, producer of a phonogram or any other right holder with respect to covered subject matter;
 - (b) information about the terms and conditions of use of covered subject matter; or
 - (c) any numbers or codes that represent the information described in subparagraphs (a) and (b), when any of these items of information is attached to covered subject matter, or appears in connection with the communication or making available of covered subject matter to the public.

Section H
Trade Secrets

Article 13.73
Scope of Trade Secret Protection

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention, each Party shall ensure that trade secret holders have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.
2. Subject to paragraphs 3 and 4, each Party shall provide that at least the following practices shall be considered contrary to honest commercial practices:
 - (a) breach of contract;

- (b) breach of confidence;
 - (c) inducement to breach a contract or confidence; and
 - (d) acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that the trade secret was acquired by practices in subparagraphs (a) through (c).
3. A Party may provide that the disclosure, acquisition or use of a trade secret is not considered contrary to honest commercial practices if:
- (a) the trade secret is obtained through:
 - (i) independent discovery or creation; or
 - (ii) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;
 - (b) the trade secret is disclosed or acquired in the exercise of the right of workers or workers' representatives to information and consultation in accordance with the Party's law; or
 - (c) the disclosure, acquisition or use is required or permitted by the Party's law.
4. A Party may provide for limited exceptions and limitations to the rights of trade secret holders in circumstances where the legitimate interests of third parties, the general public or the Party outweigh the legitimate interests of trade secret holders, including:
- (a) for exercising the right to freedom of expression and information, including respect for the freedom and pluralism of the media;
 - (b) for revealing misconduct, wrongdoing or illegal activity, provided that the person disclosing, acquiring or using the trade secret did so for the purpose of protecting the general public interest; or
 - (c) disclosure by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with the Party's law, provided that the disclosure was required to exercise those functions.

Section I
Enforcement

Subsection 1
General Obligations

Article 13.74
General Obligations

1. Each Party shall provide in its law for the enforcement of intellectual property rights consistent with the TRIPS Agreement.
2. Each Party shall ensure that the enforcement procedures and remedies set out in this Chapter are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.
3. The procedures and remedies must be:
 - (a) fair and equitable;
 - (b) applied in such a manner as to avoid the creation of barriers to legitimate trade, including electronic commerce, and to provide for safeguards against their abuse;
 - (c) implemented in a manner consistent with the Party's law including laws and regulations concerning freedom of expression, fair process and the right to privacy; and
 - (d) dissuasive and proportionate taking into account the seriousness of the infringement and the interests of third parties.
4. Procedures and remedies must not be unnecessarily complicated, costly, entail unreasonable time-limits or give rise to unwarranted delays.
5. This Section does not create any obligation:
 - (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that of the enforcement of laws and regulations in general, nor does it affect the capacity of a Party to enforce its laws and regulations in general; or
 - (b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of laws and regulations in general.

Subsection 2
Civil Remedies

Article 13.75
Fair and Equitable Procedures

1. Each Party shall make available to a right holder²⁸ civil judicial procedures and remedies concerning the enforcement of any intellectual property right covered under this Chapter.
2. Each Party shall provide that defendants have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties to the procedures shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to these procedures shall be duly entitled to substantiate their claims and to present all relevant evidence.

Article 13.76
Provisional and Precautionary Measures

1. Each Party shall provide that its judicial authorities may, on request by the applicant:
 - (a) issue against the alleged infringer, and subject to the Party's law, a third party over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid the continuation of the alleged infringement of that right, on a provisional basis or to make that continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder; and
 - (b) order the seizure or delivery up of goods suspected of infringing at least trade marks, copyright, geographical indications and designs so as to prevent their entry into or movement within the channels of commerce.
2. In the case of an alleged infringement committed on a commercial scale, each Party shall provide that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary seizure of immovable property of the alleged infringer. A Party may also provide that its judicial authorities may order the precautionary seizure of movable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

²⁸ For the purposes of this Article, the term "right holder" includes federations and associations that have legal standing to assert such rights.

Article 13.77
Provisional Measures for Preserving Evidence

1. Further to paragraph 1 of Article 13.76 (Provisional and Precautionary Measures), each Party shall provide that its judicial authorities may also order prompt and effective provisional measures to preserve relevant evidence in relation to the alleged infringement, subject to the protection of confidential information.
2. Each Party shall provide that its judicial authorities may adopt provisional measures where appropriate without the other party having been heard, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed.

Article 13.78
Evidence

1. Each Party shall provide that their judicial authorities, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, may order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.
2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Party may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 13.79
Injunctions

1. Each Party shall provide that where its judicial authorities have found an infringement of an intellectual property right, those authorities may issue an injunction aimed at prohibiting or stopping the infringement.²⁹
2. The injunction referred to in paragraph 1 shall be available against:
 - (a) the infringer; and

²⁹ The obligations in this Section are without prejudice to the flexibilities available under Article 44.2 of the TRIPS Agreement.

- (b) where appropriate and subject to the Party's law, a third party over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right.

Article 13.80

Corrective Measures

1. Each Party shall provide that their judicial authorities may order that goods that they have found to be infringing be disposed of outside the channels of commerce, without compensation of any sort to the infringer, and in such a manner as to avoid causing any harm to the right holder, or unless this would be contrary to existing constitutional requirements, destroyed.
2. Each Party shall also provide that their judicial authorities have the authority to order that materials and implements, the predominant use of which has been in the creation of the infringing goods, be disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements, without compensation of any sort to the infringer.
3. In regard to counterfeit trade mark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.
4. Each Party shall provide that their judicial authorities may order that the measures referred to in this Article are to be carried out at the expense of the infringer.

Article 13.81

Damages

1. Each Party shall provide that its judicial authorities may order an infringer who, knowingly or with reasonable grounds to know, engaged in activities infringing intellectual property rights to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.
2. In determining the amount of damages for infringements of intellectual property rights, the judicial authorities of a Party may consider any legitimate measure of value that may be submitted by the right holder, which may include lost profits suffered by the injured party or unfair profits made by the infringer, as appropriate.

Article 13.82

Legal Costs

Each Party shall provide that its judicial authorities may order that reasonable and proportionate legal costs and other expenses incurred by the successful party in legal proceedings concerning the infringement of intellectual property rights shall be borne by the unsuccessful party.

Article 13.83

Safeguards

1. Each Party shall provide that its judicial authorities may require the applicant for a measure provided for in Article 13.76 (Provisional and Precautionary Measures) in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that an infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the person against whom a measure is sought and to prevent abuse. This security or equivalent assurance shall not unreasonably deter recourse to those procedures.
2. Each Party shall provide that its judicial authorities may order a party at whose request measures were taken and who has abused enforcement procedures with regard to intellectual property rights, to provide to a person subject to those measures adequate compensation for the injury suffered because of that abuse. The judicial authorities may also order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

Article 13.84

Confidential Information in Judicial Proceedings

1. The procedures under this Article shall provide the means to identify and protect confidential information or trade secrets, unless this would be contrary to existing constitutional requirements.
2. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities may impose penalties on a party to a proceeding, counsel, expert, or other person subject to the court's jurisdiction for violation of judicial orders³⁰ concerning the protection of confidential information produced or exchanged in that proceeding.
3. Each Party shall also provide that in relation to a civil judicial proceeding, its judicial authorities may:

³⁰ For greater certainty, for the purposes of this Article, it is understood that a Party's law may use an alternative term to "judicial orders" such as "court orders".

- (a) order that a person participating in those proceedings shall not disclose or use any trade secret or alleged trade secret which the judicial authority has identified as confidential, in response to a duly reasoned application by an interested party, and on which the person participating has become aware as a result of their participation; and
- (b) take measures to preserve the confidentiality of any trade secret or alleged trade secret in the proceedings relating to the alleged disclosure, acquisition, or use of a trade secret in a manner contrary to honest commercial practices. Those specific measures may include restricting access to certain documents in whole or in part, restricting access to hearings and corresponding records or transcript, and making available non-confidential versions of a judicial decision with trade secrets removed or redacted.

Article 13.85

Administrative Procedures

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

Article 13.86

Trade Secrets Enforcement

1. In civil judicial proceedings, each Party shall provide that its judicial authorities may order:
 - (a) provisional measures to prevent the disclosure, acquisition or use of a trade secret in a manner contrary to honest commercial practices;
 - (b) the cessation or prohibition of the disclosure, acquisition or use of a trade secret in a manner contrary to honest commercial practices; and
 - (c) damages, appropriate to compensate for the injury, to be paid to the trade secret holder by the person that knew, or was grossly negligent in failing to know, that they were disclosing, acquiring, or using a trade secret in a manner contrary to honest commercial practices.

Subsection 3
Border Measures

Article 13.87
Scope of Border Measures

1. Each Party shall provide for procedures pertaining to imports under which a right holder may submit applications requesting the competent authorities to suspend the release of, or to detain, suspected goods under customs control.
2. For the purposes of this Subsection, “suspected goods” means goods suspected of infringing trade marks, copyrights and related rights, geographical indications, or industrial designs under the law of the Party providing the procedures.
3. A Party may exclude from the application of this Subsection small quantities of goods of a non-commercial nature contained in travellers’ personal luggage or sent in small consignments.
4. There shall be no obligation to apply the procedures, as described in this Subsection, to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

Article 13.88
Applications

1. Each Party shall provide that its competent authorities require a right holder who requests the procedures to suspend the release of, or to detain, suspected goods under customs control:
 - (a) to provide adequate evidence to satisfy its competent authorities that, pursuant to its law, there is *prima facie* an infringement of the right holder’s intellectual property right; and
 - (b) to supply sufficient information that may reasonably be expected to be within the right holder’s knowledge to make the suspected goods reasonably recognisable by its competent authorities.
2. Each Party shall ensure that its competent authorities decide whether they shall grant applications to suspend the release of suspected goods within a reasonable period of time of the initiation of the procedures described in Article 13.87 (Scope of Border Measures), as provided under each Party’s law.
3. Each Party shall ensure that any fees imposed to cover the administrative costs, arising from the processing or recording of an application, are commensurate with the costs incurred by the competent authorities.
4. Each Party shall provide that, where requested by the customs authorities, the holder of the granted 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.

Article 13.89

Security or Equivalent Assurance

Each Party shall provide that its competent authorities may require a right holder initiating procedures referred to in Article 13.87 (Scope of Border Measures) to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 13.90

Notice of Suspension

Each Party shall provide that the importer and the applicant are promptly notified of the suspension of the release of goods.

Article 13.91

Indemnification of the Importer and of the Owner of the Goods

The Parties shall provide that their respective relevant authorities may order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods.

Article 13.92

Suspension of IPR Infringing Goods by Ex-Officio Action

1. Each Party shall provide that its competent authorities may suspend the release into free circulation of, or detain, imported suspected goods³¹ under customs control *ex officio*, without the need for a formal complaint from a third party or right holder. Each Party shall provide that its customs authorities use risk management to identify suspected goods, which may include random selection.
2. Each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

³¹ For greater certainty, a Party may comply with this requirement by requiring that its competent authorities have reasonable grounds for believing that the goods are suspected goods.

3. Each Party shall provide that its competent authorities may, where they act on their own initiative, request a right holder to supply relevant information to assist the competent authorities in the exercise of those powers.

Article 13.93

Provision of Information to Right Holder

A Party may provide that its competent authorities may inform the right holder of the names and addresses of the consignor, exporter, consignee or importer; a description of the suspected goods; the quantity of the suspected goods; and, if known, the country of origin of the suspected goods. This paragraph is without prejudice to a Party's law pertaining to privacy or confidential information and applies if a Party's competent authorities have detained or suspended the release of suspected goods.

Article 13.94

Authority to Determine Infringements

Each Party shall adopt or maintain procedures under which its competent authorities may determine, within a reasonable period after initiation of procedures to suspend the release of, or to detain, the suspected goods under customs control and upon due examination, whether suspected goods infringe an intellectual property right.

Article 13.95

Remedies

Each Party shall provide that its competent authorities may order the destruction or disposal of suspected goods following a determination that the goods are infringing. In cases where goods are not destroyed, each Party shall provide that, other than in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trade mark goods, the simple removal of a trade mark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

Subsection 4

Criminal Procedures and Penalties

Article 13.96

Offences

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trade mark counterfeiting or copyright piracy on a commercial scale, whether or not carried out for commercial advantage or financial gain.

2. Each Party shall provide for criminal procedures and penalties to be applied in cases of selling, offers for sale, or distribution in the course of trade and on a commercial scale, of a label or packaging:
 - (a) to which a trade mark has been applied without authorisation that is identical to, or cannot be distinguished from, a trade mark registered in its territory; and
 - (b) that is intended to be used in the course of trade on goods that are identical to goods for which that trade mark is registered.
3. With respect to the offences specified in paragraphs 1 and 2, each Party shall provide that criminal liability for aiding and abetting is available under its law.³²

Article 13.97 **Ex-Officio Enforcement**

Each Party shall provide that its competent authorities may act upon their own initiative to initiate legal action with respect to the offences specified in Article 13.96 (Offences), without the need for a formal complaint by a third party or right holder.

Article 13.98 **Seizure**

With respect to the offences specified in Article 13.96 (Offences), each Party shall provide that its competent authorities may order the seizure of suspected counterfeit trade mark goods or pirated copyright goods, any related materials and implements which have been predominantly used in the commission of the alleged offence, or documentary evidence relevant to the alleged offence, and assets derived from or obtained through the alleged infringing activity.

Article 13.99 **Forfeiture and Destruction of Goods**

1. With respect to the offences specified in Article 13.96 (Offences), each Party shall provide that its competent authorities may order the forfeiture or destruction³³ of:
 - (a) all counterfeit trade mark goods or pirated copyright goods;

³² For greater certainty, this Article also applies to offences in any free trade zones in a Party.

³³ A Party may also provide for its competent authorities to order the disposal of items under this Article outside the channels of commerce in such a manner as to avoid causing any harm to the right holder.

- (b) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trade mark goods; and
 - (c) any other labels or packaging to which a counterfeit trade mark has been applied and that have been used in the commission of the offence.
- 2. With respect to the offences specified in Article 13.96 (Offences), the competent authorities of a Party may order that the forfeiture, destruction or disposal of goods outside the channels of commerce shall occur without compensation of any kind to the offender.
- 3. With respect to the offences specified in Article 13.96 (Offences), each Party shall further provide that its competent authorities may order the forfeiture of any assets derived from or obtained through infringing activity.

Article 13.100

Evidence Held by Competent Authorities

Each Party shall provide that its competent authorities may provide access to goods, material, implements, and other evidence held by the relevant authority to a right holder.³⁴

Article 13.101

Penalties

- 1. With respect to the offences specified in Article 13.96 (Offences), each Party shall provide for penalties that include imprisonment or monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.
- 2. Each Party shall provide that its competent authorities may, in determining penalties, account for the seriousness of the circumstances, in accordance with its law.³⁵

³⁴ For greater certainty, access to any relevant evidence under this Article may be provided to assist the right holder in civil infringement proceedings. The Parties shall also provide for the release of evidence where this is available under a Party's law.

³⁵ Factors that may be considered in assessing the level of penalties may include threats to, or effects on, health, safety or both.

Subsection 5
Enforcement in The Digital Environment

Article 13.102
Infringement in the digital environment

1. Each Party shall provide that the enforcement procedures and remedies, referred to in Subsections 2 (Civil Remedies) and 4 (Criminal Procedures and Penalties), as applicable, are available under its law to proceed against an act of infringement of intellectual property rights which takes place in the digital environment.
2. For the purpose of this Subsection, infringement of intellectual property rights shall mean the infringement of copyright or related rights over digital networks, which may include the use of means of widespread distribution for infringing purposes, or trade marks over digital networks, including electronic commerce platforms and social media.

Article 13.103
Limited Liability of Online Service Providers

1. Each Party shall establish or maintain a system which in appropriate cases limits the liability of, or remedies available against an Online Service Provider (“OSP”), for infringements of copyright or related rights or trade marks committed by a user of its services. Each Party shall provide that an OSP shall qualify for this limitation of liability, in accordance with its law under certain specified conditions. Those conditions shall include, where appropriate, that the OSP be required to make reasonable efforts to prevent access to the materials infringing these rights.
2. This Article shall not affect the possibility of a court or administrative authority, in accordance with the law of a Party, requiring the OSP to terminate, remove or disable access to infringing content, including by granting an injunction pursuant to Article 13.76 (Provisional and Precautionary Measures), Article 13.79 (Injunctions) or Article 13.104 (Blocking Orders).

Article 13.104
Blocking Orders

Each Party shall provide that its civil judicial authorities may grant an injunction against an OSP, ordering the OSP to take action to block access to infringing content, in cases where the services of the OSP are used by a third party to infringe copyright or related rights and trade marks.

Article 13.105

Domain Registries

1. Each Party shall encourage their domain registry to provide the use of measures that appropriately, timely, and effectively suspend domains used in the infringement of copyright or related rights and trade marks on their respective ccTLDs.³⁶
2. This requirement may be satisfied by measures facilitating cooperative arrangements between the relevant domain registry, law enforcement and industry groups.

Subsection 6

Enforcement Practices

Article 13.106

Publication of Judicial Decisions

Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights are made available³⁷ preferably in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based.

Article 13.107

Access to Justice

1. The Parties recognise the importance of ensuring that all right holders have access to justice and recognise that SMEs³⁸ and individual right holders can disproportionately face barriers to their international trade due to unwarranted costs and delays in enforcing their intellectual property rights.
2. Each Party shall endeavour to encourage the use of alternate dispute resolution (“ADR”) mechanisms for disputes relating to intellectual property.
3. Each Party shall endeavour to further facilitate access to justice for all right holders. Those measures may include the provision of specialist intellectual property judicial authorities.

³⁶ For greater certainty, this Article shall not be construed as prejudicing the independence of each Party’s domain registry.

³⁷ For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

³⁸ For the purposes of this provision, SMEs shall be defined as including start-ups and micro-entities.

Article 13.108
Voluntary Stakeholder Initiatives

Each Party shall endeavour to promote cooperative efforts within the business community to effectively address intellectual property infringement, including in the digital environment, while preserving legitimate competition. This may include encouraging the establishment of public or private advisory groups to address issues of at least trade mark counterfeiting and copyright piracy.

Article 13.109
Public Awareness

Each Party shall, as appropriate, use reasonable efforts to enhance public awareness of the importance of respecting intellectual property rights and the detrimental effect of the infringement of intellectual property rights. This may include cooperation with the business community, civil society organisations, and right holder representatives.

Article 13.110
Specialised Expertise and Domestic Coordination

1. Each Party shall encourage the development of specialised expertise within its competent authorities responsible for the enforcement of intellectual property rights.
2. For the purpose of enforcing intellectual property rights, each Party recognises that effective coordination is required between their competent authorities.³⁹

Article 13.111
Environmental Considerations

Without prejudice to the obligations arising from Article 13.80 (Corrective Measures), Article 13.98 (Seizure) and Article 13.99 (Forfeiture and Destruction of Goods), the Parties recognise the importance of having due regard to environmental matters in their enforcement practices relating to the destruction and disposal of goods that have been found to infringe intellectual property rights.

³⁹ For the avoidance of doubt, this paragraph does not create any new international coordination obligations between the Parties' competent authorities.