

## CHAPTER 14

### INTELLECTUAL PROPERTY

#### SECTION A

##### General provisions

#### ARTICLE 14.1

##### Initial provisions

1. In order to facilitate the production and commercialisation of innovative and creative products and the provision of services between the Parties and to increase the benefits from trade and investment, the Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property and provide for measures for the enforcement of intellectual property rights against infringement thereof, including counterfeiting and piracy, in accordance with the provisions of this Chapter and of the international agreements to which both Parties are party.
2. 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 the provisions of this Chapter.

3. For the purposes of this Chapter, "intellectual property" means all categories of intellectual property that are covered by Articles 14.8 to 14.44 of this Chapter or Sections 1 to 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the Paris Convention for the Protection of Industrial Property, done at Paris on 20 March 1883 (hereinafter referred to as "the Paris Convention")<sup>1</sup>.

4. The objectives and principles set out in Part I of the TRIPS Agreement, in particular in Articles 7 and 8, shall apply to this Chapter, *mutatis mutandis*.

## ARTICLE 14.2

### Agreed principles

Having regard to the underlying public policy objectives of domestic systems, the Parties recognise the need to:

- (a) promote innovation and creativity;
- (b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and
- (c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of, *inter alia*, transparency and non-discrimination, and taking into account the interests of relevant stakeholders including right holders and users.

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<sup>1</sup> For greater certainty, the Paris Convention shall be understood to be the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Brussels on 14 December 1900, at Washington on 2 June 1911, at The Hague on 6 November 1925, at London on 2 June 1934, at Lisbon on 31 October 1958, and at Stockholm on 14 July 1967 and as amended on 28 September 1979.

## ARTICLE 14.3

### International agreements

1. The provisions of this Chapter shall complement the rights and obligations of the Parties under other international agreements in the field of intellectual property to which both Parties are party.
2. The Parties affirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Parties are party at the date of entry into force of this Agreement, including the following:
  - (a) the TRIPS Agreement;
  - (b) the Paris Convention;
  - (c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961 (hereinafter referred to as "the Rome Convention");
  - (d) the Berne Convention for the Protection of Literary and Artistic Works, done at Berne on 9 September 1886 (hereinafter referred to as "the Berne Convention")<sup>1</sup>;
  - (e) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;
  - (f) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996;

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<sup>1</sup> For greater certainty, the Berne Convention shall be understood to be the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, completed at Paris on 4 May 1896, revised at Berlin on 13 November 1908, completed at Berne on 20 March 1914, revised at Rome on 2 June 1928, at Brussels on 26 June 1948, at Stockholm on 14 July 1967 and at Paris on 24 July 1971 and amended on 28 September 1979.

- (g) 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;
- (h) the International Convention for the Protection of New Varieties of Plants, done at Paris on 2 December 1961 (hereinafter referred to as "the 1991 UPOV Convention")<sup>1</sup>;
- (i) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989;
- (j) the Patent Cooperation Treaty, done at Washington on 19 June 1970;
- (k) the Patent Law Treaty, adopted at Geneva on 1 June 2000;
- (l) the Trademark Law Treaty, adopted at Geneva on 27 October 1994;
- (m) the Singapore Treaty on the Law of Trademarks, adopted at Singapore on 27 March 2006;
- (n) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999;
- (o) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June 2013;
- (p) the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on 8 October 1968; and
- (q) 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.

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<sup>1</sup> For greater certainty, the 1991 UPOV Convention shall be understood to be the International Convention for the Protection of New Varieties of Plants of 2 December 1961 as revised at Geneva on 19 March 1991.

3. Each Party shall make all reasonable efforts to ratify or accede to the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012, if, by the date of entry into force of this Agreement, it is not already party to it.

#### ARTICLE 14.4

##### National treatment

1. In respect of all categories of intellectual property covered by this Chapter, each Party shall accord to nationals<sup>1</sup> of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection<sup>2</sup> of intellectual property subject to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Agreement.

2. The obligation pursuant to paragraph 1 shall also be subject to the exceptions provided for in Article 5 of the TRIPS Agreement.

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<sup>1</sup> For the purposes of this Article and Article 14.5, "nationals" has the same meaning as in the TRIPS Agreement.

<sup>2</sup> For the purposes of this Article and Article 14.5, "protection" includes matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

## ARTICLE 14.5

### Most-favoured-nation treatment

Each Party shall immediately and unconditionally accord to nationals of the other Party treatment no less favourable than the treatment it accords to the nationals of a third country with regard to the protection of intellectual property, subject to the exceptions provided for in Articles 4 and 5 of the TRIPS Agreement.

## ARTICLE 14.6

### Procedural matters and transparency

1. Each Party shall make all reasonable efforts to promote efficiency and transparency in the administration of its intellectual property system.
2. For the purpose of providing an efficient administration of its intellectual property system, each Party shall take appropriate measures to enhance the efficiency of its administrative procedures concerning intellectual property rights in line with international standards.
3. For the purpose of further promoting transparency in the administration of its intellectual property system, each Party shall make all reasonable efforts to take appropriate available measures to:
  - (a) publish information on, and make available to the public information contained in the files on:
    - (i) applications for and grant of patents;
    - (ii) registrations of industrial designs;
    - (iii) registrations of trademarks and applications therefor;

- (iv) registrations of new varieties of plants; and
- (v) registrations of geographical indications;
- (b) make available to the public information on measures taken by the competent authorities for the suspension of the release of goods infringing intellectual property rights as a border measure set out in Article 14.57;
- (c) make available to the public information on its efforts to ensure effective enforcement of intellectual property rights and other information with regard to its intellectual property system; and
- (d) make available to the public information on relevant laws and regulations, final judicial decisions, and administrative rulings of general application pertaining to the enforcement of intellectual property rights.

#### ARTICLE 14.7

##### Promotion of public awareness concerning protection of intellectual property

Each Party shall take necessary measures to continue promoting public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

## SECTION B

### Standards concerning intellectual property

#### SUB-SECTION 1

#### Copyright and related rights

#### ARTICLE 14.8

##### Authors

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

- (a) direct or indirect reproduction by any means and in any form, in whole or in part, of their works;
- (b) any form of distribution to the public, by sale or otherwise, of the original of their works or of copies thereof; each Party may determine the conditions under which the exhaustion of the right set out in this provision applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorisation of the author; and
- (c) any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.



## ARTICLE 14.9

### Performers

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

- (a) the fixation of their performances;
- (b) direct or indirect reproduction by any means and in any form, in whole or in part, of fixations of their performances;
- (c) the distribution to the public, by sale or otherwise, of fixations of their performances in phonograms; each Party may determine the conditions under which the exhaustion of the right set out in this provision applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorisation of the performer;
- (d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and
- (e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

## ARTICLE 14.10

### Producers of phonograms

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

- (a) direct or indirect reproduction by any means and in any form, in whole or in part, of their phonograms;
- (b) the distribution to the public, by sale or otherwise, of their phonograms, including copies; each Party may determine the conditions under which the exhaustion of the right set out in this provision applies after the first sale or other transfer of ownership of the original or a copy of the phonogram with the authorisation of the producer of the phonogram; and
- (c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

## ARTICLE 14.11

### Broadcasting organisations

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

- (a) the fixation of their broadcasts;
- (b) the reproduction of fixations of their broadcasts;

- (c) the making available to the public<sup>1</sup> of their broadcasts, by wire or wireless means, which is made in response to a request from a member of the public;<sup>2</sup>
- (d) the rebroadcasting of their broadcasts by wireless means; and
- (e) the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; each Party may determine the conditions under which that exclusive right may be exercised.

## ARTICLE 14.12

### Use of phonograms

The Parties agree to discuss measures to ensure adequate remuneration for performers and producers of phonograms when phonograms published for commercial purposes are used for broadcasting or for any communication to the public.

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<sup>1</sup> For greater certainty, for the United Kingdom, this right is limited to situations where the request is made from a place and at a time individually chosen by a member of the public.

<sup>2</sup> For greater certainty, for Japan, this subparagraph shall be applied to the form of public transmission which occurs automatically in response to a request from the public, except for those which occur manually.

## ARTICLE 14.13

### Term of protection<sup>1</sup>

1. The term of protection for rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public. If the term of protection for those rights is counted on a basis other than the life of a natural person, such term shall be no less than 70 years after the work is lawfully made available to the public. Failing such making available within 70 years after the creation of the work, the term of protection shall be no less than 70 years from the work's creation.
2. The term of protection for rights of performers shall be no less than 50 years after the performance.
3. The term of protection for rights of producers of phonograms shall be no less than 70 years after the phonogram was published. Failing such publication within at least 50 years from the fixation of the phonogram, the term of protection shall be no less than 50 years after the fixation was made<sup>2</sup>.
4. The term of protection for rights in broadcasts shall be no less than 50 years after the first transmission of the broadcast.
5. The terms set out in this Article shall be counted from the first of January of the year following the year of the event which gives rise to them.

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<sup>1</sup> Nothing in this Article shall prevent a Party from providing longer terms of protection than those specified in the Article.

<sup>2</sup> Each Party may adopt effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and producers of phonograms.

## ARTICLE 14.14

### Limitations and exceptions

Each Party may provide for limitations or exceptions to the rights set out in Articles 14.8 to 14.12 only in certain special cases which neither conflict with a normal exploitation of the subject matter nor unreasonably prejudice the legitimate interests of the right holders, in accordance with the conventions and international agreements to which it is party.

## ARTICLE 14.15

### Artist's resale right in works of art

The Parties agree to exchange views and information on issues related to a right to an interest in the resale of an original work of art and the situation in this regard in the United Kingdom and in Japan.

## ARTICLE 14.16

### Collective management

1. The Parties recognise the importance of fostering cooperation between their respective collective management organisations for the purposes of facilitating licensing of content between such collective management organisations, as well as encouraging<sup>1</sup> transfer of royalties for use of works or other copyright-protected subject matters of the nationals of the other Party.
2. Each Party shall ensure that its collective management organisations are encouraged to:
  - (a) operate to collect and distribute revenues to the right holders they represent in a manner that is fair, efficient, transparent and accountable; and

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<sup>1</sup> For greater certainty, "encouraging" does not require a Party to intercede in any contractual arrangements between collective management organisations.

(b) adopt open and transparent record keeping of the collection and distribution of revenues.

3. The Parties endeavour to facilitate non-discriminating treatment by collective management organisations of right holders they represent either directly or via another collective management organisation.

#### ARTICLE 14.17

##### Protection of existing subject matter

1. Each Party shall apply Article 18 of the Berne Convention and paragraph 6 of Article 14 of the TRIPS Agreement, *mutatis mutandis*, to works, performances and phonograms, and the rights in and protections afforded to those subject matters as required by this Sub-Section.

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.

#### ARTICLE 14.18

##### Technological protection measures

Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights under the laws and regulations of the Party and that restrict acts, in respect of their works, performances or phonograms, which are not authorised by the authors, performers or producers of phonograms concerned or permitted by the laws and regulations of the Party.

## ARTICLE 14.19

### Rights management information

1. Each Party shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of copyright and related rights:
  - (a) to remove or alter any electronic rights management information without authority; and
  - (b) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, works, copies of works, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.
  
2. The term "rights management information" means information which identifies a work, performance or phonogram; the author of the work, the performer of the performance or the producer of the phonogram; the owner of any right in the work, performance or phonogram; or information about the terms and conditions of the use of the work, performance or phonogram; and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance or a phonogram or appears in connection with the communication or making available of a work, a fixed performance or a phonogram to the public.

## SUB-SECTION 2

### Trademarks

#### ARTICLE 14.20

##### Rights conferred by a trademark

Each Party shall ensure that the owner of a registered trademark has the exclusive right to prevent all third parties not having the owner's consent from using<sup>1</sup> in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. In the 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 a Party to make rights available on the basis of use.

#### ARTICLE 14.21

##### Exceptions

Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms<sup>2</sup> and may provide for other limited exceptions, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

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<sup>1</sup> For the purposes of this Article, "using" such sign includes, at least, importing and exporting goods or packages of goods to which the sign is affixed.

<sup>2</sup> The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services in accordance with honest practices in industrial or commercial matters.



## ARTICLE 14.22

### Preparatory acts deemed as infringement

With regard to labels and packaging, each Party shall provide that at least each of the following preparatory acts are deemed as an infringement of a registered trademark if the act has been performed without the consent of the registered trademark owner:

- (a) the manufacture;
- (b) the importation; and
- (c) the presentation<sup>1</sup>

of labels or packaging bearing<sup>2</sup> a sign which is identical or similar to the registered trademark, for the purpose of using such sign or causing it to be used in the course of trade for goods or services which are identical or similar to those in respect of which the trademark is registered.

## ARTICLE 14.23

### Well-known trademarks

1. For the purpose of giving effect to the protection of well-known trademarks, as referred to in Article 6*bis* of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, the Parties affirm the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of the WIPO in 1999.

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<sup>1</sup> For the purposes of this Article, the United Kingdom considers "presentation" as offering or putting on the market and Japan considers "presentation" as assignment.

<sup>2</sup> For the purposes of this Article, for Japan, "bearing" means indicating.

2. Neither Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another country, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

#### ARTICLE 14.24

##### Bad faith trademarks

Each Party shall provide that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trademark was made in bad faith, in accordance with its laws and regulations.<sup>1 2</sup>

#### ARTICLE 14.25

##### Registration and renewal processes

To maintain a streamlined trademark registration system that can adapt to technological advances, the Parties recognise the importance of maintaining best practice for the efficient registration and renewal processes for trademarks.

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<sup>1</sup> For the purposes of this Article, a Party may provide that the competent authority of a Party may take into consideration whether the trademark is identical or similar to a well-known trademark of another person.

<sup>2</sup> The Parties understand that an application to register a trademark, which is identical or similar to a trademark well-known in either Party or in a third country as indicating the goods or services of another person, may be considered as an application made in bad faith as determined in accordance with the applicable laws and regulations of each Party.

## SUB-SECTION 3

### Geographical indications

#### ARTICLE 14.26

##### Scope

1. This Sub-Section applies to the recognition and protection of geographical indications for wines, spirits and other alcoholic beverages<sup>1</sup> as well as agricultural products<sup>2</sup> which originate in the Parties.
2. For the purposes of this Chapter, "geographical indications" means indications which identify a good as originating in the territory of a Party, or a region or locality in that Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
3. Geographical indications of a Party listed in Annex 14-B shall be protected by the other Party under this Agreement if they fall within the types of goods that the other Party protects in accordance with its laws and regulations as listed in Annex 14-A.

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<sup>1</sup> For the purposes of this Sub-Section, with respect to the protection of geographical indications in Japan, "alcoholic beverages" means beverages containing one per cent of alcohol or more.

<sup>2</sup> For the purposes of this Sub-Section, with respect to the protection of geographical indications in Japan, "agricultural products" means agricultural, forestry and fishery products as well as foodstuffs excluding alcoholic beverages.

## ARTICLE 14.27

### System of protection of geographical indications

1. Each Party shall establish or maintain a system for the registration<sup>1</sup> and protection of geographical indications in its territory.
2. The system referred to in paragraph 1 shall contain at least the following elements:
  - (a) an official means to make available to the public the list of registered geographical indications;
  - (b) an administrative process to verify that a geographical indication to be registered as referred to in subparagraph (a) identifies a good as originating in the territory of a Party, or a region or locality in that Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
  - (c) an opposition procedure that allows the legitimate interests of third parties to be taken into account; and
  - (d) a procedure for the cancellation<sup>2</sup> of the protection of a geographical indication, taking into account the legitimate interests of third parties and the users of the registered geographical indications in question.<sup>3</sup>

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<sup>1</sup> For the purposes of this Sub-Section, with respect to the protection of geographical indications in Japan, "registration" and "register" respectively may be deemed to be synonymous with "designation" or "confirmation of protection" and "designate" or "confirm protection" under its relevant laws and regulations.

<sup>2</sup> For the purposes of this Sub-Section, with respect to the protection of geographical indications in Japan, "cancellation" may be deemed to be synonymous with "exemption from protection" under its relevant laws and regulations.

<sup>3</sup> Without prejudice to its laws and regulations on the system referred to in paragraph 1, each Party shall provide for legal means for the invalidation of the registration of geographical indications.

## ARTICLE 14.28

### Lists of geographical indications

1. Following the completion of an opposition procedure and an examination of the geographical indications of the United Kingdom listed in Section A of Part 1 and Section A of Part 2 of Annex 14-B, Japan shall recognise that those indications are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and that they have been registered by the United Kingdom under the system referred to in Article 14.27. Japan shall protect those geographical indications in accordance with this Sub-Section.

2. Following the completion of an opposition procedure and an examination of the geographical indications of Japan listed in Section B of Part 1 and Section B of Part 2 of Annex 14-B, the United Kingdom shall recognise that those indications are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and that they have been registered by Japan under the system referred to in Article 14.27. The United Kingdom shall protect those geographical indications in accordance with this Sub-Section.

## ARTICLE 14.29

### Scope of protection of geographical indications

1. Subject to Article 14.33 each Party shall, in respect of geographical indications of the other Party listed in Annex 14-B, provide the legal means for interested parties to prevent in its territory:<sup>1</sup>

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<sup>1</sup> For the purposes of this paragraph, and notwithstanding Sub-Section 2 of Section C, each Party may provide for enforcement by administrative action.

- (a) the use of a geographical indication identifying a good for a like good<sup>1</sup> not meeting the applicable requirement of specifications of the geographical indication even if:
  - (i) the true origin of the good is indicated;
  - (ii) the geographical indication is used<sup>2</sup> in translation or transliteration<sup>3</sup>; or
  - (iii) the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation", or the like;
- (b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and
- (c) any other use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

2. Each Party may determine the practical conditions under which the 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.

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<sup>1</sup> For the purposes of this paragraph, paragraph 4 of Article 14.31 and paragraphs 1 and 2 of Article 14.33, "like good", in relation to a good for which a geographical indication has been protected in a Party's system as referred to in paragraph 2 of Article 14.27, means a good that would fall within the same category of good as the good for which a geographical indication has been registered in that Party.

<sup>2</sup> For greater certainty, it is understood that this is assessed on a case-by-case basis. This provision does not apply where evidence is provided that there is no link between the protected name and the translated or transliterated term.

<sup>3</sup> For the purposes of this Sub-Section, transliteration covers the conversion of characters following the phonetics of the original language or languages of the relevant geographical indication.

3. If a Party intends to protect, pursuant to an international agreement, a geographical indication of a third country which is homonymous with a geographical indication of the other Party which is protected under this Agreement, the former Party shall inform no later than on the date of the publication for opposition, the other Party of the opportunity to comment, provided that such opposition procedure for the relevant geographical indication of the third country to be protected commences after the date of entry into force of this Agreement.

4. In the opposition procedure and examination referred to in Article 14.28, each Party may consider the following grounds on which that Party shall not be required to protect a name as a geographical indication in Annex 14-B:

- (a) that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good; and
- (b) that name is the term customary in common language as the common name for the good concerned.

#### ARTICLE 14.30

##### Scope of the use of geographical indications

1. Any person may use any geographical indication protected under this Sub-Section provided that such use is related to the goods as identified by that geographical indication and in compliance with the scope of protection under this Agreement.

2. Once a geographical indication of a Party is protected under this Agreement in the other Party, the legitimate use of such protected name shall not be subject to any user registration or further charges in the other Party.

## ARTICLE 14.31

### Relationship with trademarks

1. If a geographical indication is protected under this Sub-Section, each Party shall refuse to register a trademark the use of which would be likely to mislead as to the quality of the good, provided that an application to register the trademark is submitted after the applicable date for protection of the geographical indication in the territory concerned<sup>1</sup> as referred to in paragraphs 2 and 3. Trademarks registered in breach of this paragraph shall be invalidated.
2. For geographical indications referred to in Article 14.28 and listed in Annex 14-B on the date of entry into force of this Agreement, the applicable date for protection shall be the date of entry into force of this Agreement.
3. For geographical indications referred to in Article 14.34 and not listed in Annex 14-B on the date of entry into force of this Agreement, the applicable date for protection shall be the date on which the amendment to Annex 14-B enters into force.
4. The Parties acknowledge that the existence of a prior conflicting trademark in a Party would not completely preclude the protection under this Agreement of a subsequent geographical indication for like goods in that Party.<sup>2</sup>
5. If a trademark has been applied for or registered in good faith, or if rights to a trademark have been acquired through use in good faith, in a Party, before a geographical indication is protected under this Agreement in that Party, measures adopted to implement this Sub-Section shall not prejudice the eligibility for or the validity of the registration of the trademark, or the right to use the trademark, on the basis that such a trademark is identical with, or similar to, the geographical indication.

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<sup>1</sup> For the purposes of paragraph 1, the examination of the trademark application which is filed in a Party after 1 February 2019 or the date of publication for opposition of a geographical indication referred to in Article 14.28, whichever is later, shall take into account the publication for opposition of the geographical indication.

<sup>2</sup> The competent authorities may require certain conditions for the protection of a geographical indication which conflicts with a prior existing trademark.



## ARTICLE 14.32

### Enforcement of protection

Each Party shall authorise its competent authorities to take appropriate measures *ex officio* or on request of an interested party in accordance with its laws and regulations to protect geographical indications listed in Annex 14-B.

## ARTICLE 14.33

### Exceptions

1. Notwithstanding paragraph 1 of Article 14.29, a Party shall prevent the continuation of a prior use in its territory, in connection with goods or services, of a particular geographical indication of the other Party listed in Annex 14-B, identifying an agricultural product for a like good, after a transitional period of a maximum of seven years from the date of the protection by the former Party of the said geographical indication. Goods produced in the former Party and concerned by such uses shall bear clear and visible indication of the true geographical origin.
2. Notwithstanding paragraph 1 of Article 14.29, except when paragraph 4 of Article 24 of the TRIPS Agreement is applicable, a Party shall prevent the continuation of a prior use in its territory, in connection with goods or services, of a particular geographical indication of the other Party listed in Annex 14-B, identifying wine, spirit or other alcoholic beverage for a like good, after a transitional period of a maximum of five years from the date of the protection by the former Party of the said geographical indication<sup>1</sup>. Goods produced in the former Party and concerned by such uses shall bear clear and visible indication of the true geographical origin.

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<sup>1</sup> Notwithstanding this paragraph, for geographical indications listed in Annex 14-B as of the date of entry into force of this Agreement identifying wine, spirits or other alcoholic beverages, the transitional period shall be a maximum of three years from the date of entry into force of this Agreement.

3. Each Party may determine the practical conditions under which such use referred to in paragraphs 1 and 2 will be differentiated from the geographical indication in its territory, taking into account the need to ensure that consumers are not misled.
4. The transitional period referred to in paragraph 1 shall not apply if the use of the geographical indication for the good concerned which is produced in the territory of the other Party as referred to in paragraph 1 does not comply with the relevant laws and regulations as listed in Annex 14-A applicable in the territory of that Party.
5. Nothing in this Sub-Section shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

#### ARTICLE 14.34

##### Amendment of the lists of geographical indications

1. The Parties agree on the possibility to amend the lists of geographical indications in Annex 14-B in accordance with paragraphs 3 and 4 of Article 14.61 after having completed the opposition procedure and after having examined the geographical indications as referred to in Article 14.28 to the satisfaction of both Parties.
2. Paragraph 4 of Article 14.29 applies as regards the addition of a name to be protected as a geographical indication in Annex 14-B.
3. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in accordance with the laws and regulations of the other Party. Each Party shall notify the other Party if a geographical indication ceases to be protected in the territory of the Party of origin.
4. On request of a Party, the Parties shall hold consultations for the amendment of Annex 14-B as regards any matter affecting the continuation of the protection of the geographical indications listed in that Annex with a view to reaching a mutually acceptable solution.

5. The Parties shall, as soon as practically possible after the entry into force of this Agreement, enter into consultations with a view to adding to the lists of geographical indications in Annex 14-B, existing geographical indications identifying a good as originating in the territory of a Party and protected in such territory in accordance with its laws and regulations, which are not yet listed in that Annex. Each Party shall provide to the other Party the list of geographical indications it seeks to add to Annex 14-B for protection in the territory of the other Party, as well as their specifications, and the transcriptions into Japanese (for geographical indications of the United Kingdom) or the Latin alphabet (for geographical indications of Japan) for both the geographical indications and their specifications. As soon as practically possible after receipt of such information and in accordance with its laws and regulations, each Party shall conduct an examination and opposition procedure for those geographical indications. As soon as practically possible after the completion of the examination and opposition procedure, the Committee on Intellectual Property shall make recommendations to the Joint Committee on amendments to Annex 14-B to add the names that are eligible for protection as geographical indications, in accordance with paragraph 3 of Article 14.61.

## SUB-SECTION 4

### Industrial designs<sup>1</sup>

## ARTICLE 14.35

### Industrial designs

1. Each Party shall provide for the protection of independently created industrial designs that are new and original<sup>2</sup>, including designs of a part of a product<sup>3</sup>, regardless of whether or not the part can be separated from the product. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this Article.

2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall be considered to be new and original in the following circumstances<sup>4</sup>:

- (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use<sup>5</sup> of the latter; and
- (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

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<sup>1</sup> For the purposes of this Sub-Section, for the United Kingdom, "industrial designs" refers to registered designs.

<sup>2</sup> For the purposes of this Article, a Party may consider, in accordance with its laws and regulations, that a design "having individual character" is original.

<sup>3</sup> For the purposes of this paragraph and paragraph 2, for Japan, "product" shall be interpreted as "article".

<sup>4</sup> As an alternative to the circumstances provided for in subparagraphs (a) and (b), a Party may consider a design applied to or incorporated in a product which constitutes a component part of a complex product to be new and original in circumstances in accordance with its laws and regulations.

<sup>5</sup> For the purposes of this paragraph, "normal use" shall mean use by the end user, excluding maintenance, servicing or repair work.

3. Each Party may provide limited exceptions to the protection of industrial designs in a manner consistent with paragraph 2 of Article 26 of the TRIPS Agreement.
4. The provisions of this Article shall be without prejudice to any provisions of this Chapter or of the laws and regulations of each Party relating to other intellectual property including unregistered appearances of products, copyright, trademarks or other distinctive signs and patents.
5. Each Party shall ensure that an owner of a protected industrial design has at least the right to prevent third parties not having the owner's consent from making, offering for sale, selling, importing or exporting articles bearing or embodying a design which is identical or similar to the protected design, when such act is undertaken for commercial purposes.
6. Each Party shall provide that an applicant for an industrial design registration may request the competent authority to maintain the design unpublished for a period designated by the applicant not exceeding the period provided for in its laws and regulations.
7. Each Party shall ensure that the total term of protection available for industrial designs does not end before the expiration of a period of 25 years from the date on which the application was made or is treated as having been made.

#### ARTICLE 14.36

##### Multiple design applications<sup>1</sup>

Each Party shall provide a system for the registration of industrial designs which allows for two or more designs to be registered through the filing of one application.

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<sup>1</sup> The Parties understand that Japan shall implement the obligations referred to in this Article only after the relevant laws and regulations of Japan have come into force and, in any event, within six months of the date of entry into force of this Agreement.

## SUB-SECTION 5

### Unregistered appearance of products

#### ARTICLE 14.37

### Unregistered appearance of products

1. The Parties recognise that the appearance of products may be protected through industrial designs, copyright or unfair competition prevention legislation.
2. Each Party shall provide legal means to prevent the use of the unregistered appearance of a product, if such use results from copying the unregistered appearance of the product to the extent provided by its laws and regulations. Such use shall at least cover offering for sale, putting on the market, importing or exporting the product.<sup>1</sup>
3. The duration of protection available for the unregistered appearance of a product shall amount to at least three years according to the respective laws and regulations of the Parties.

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<sup>1</sup> For the purposes of this Article, "copying", "appearances", "offering", and "putting on the market" may be deemed by a Party to be synonymous with "imitating", "configuration", "displaying" and "selling", respectively.

## SUB-SECTION 6

### Patents

## ARTICLE 14.38

### Patents

1. Each Party shall ensure that a patent confers on its owner exclusive rights:
  - (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from making, using, offering for sale, selling, importing for these purposes or exporting<sup>1</sup> 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 using the process, and from using, offering for sale, selling, importing for these purposes or exporting at least the product obtained directly by that process.
2. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such 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.
3. The Parties recognise the importance of providing a unitary patent protection system including a unitary judicial system in their respective territories.
4. The Parties shall continue to cooperate to enhance international substantive patent law harmonisation, *inter alia* on grace period, prior user rights and publication of pending patent applications.

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<sup>1</sup> For the purposes of this paragraph, a Party may interpret "exporting" to fall within the scope of "offering for sale" and fulfil its obligation relating to "exporting" by complying with its obligation relating to "offering for sale".

5. The Parties shall give due consideration to the cooperation for enhancing mutual utilisation of search and examination results, such as that based upon the Patent Cooperation Treaty and any other utilisation<sup>1</sup>, so as to allow applicants to obtain patents in an efficient and expeditious manner, without prejudice to their respective substantive patent examination.

#### ARTICLE 14.39

##### Patents and public health

1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health, adopted at Doha on 14 November 2001 by the WTO Ministerial Conference. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with that Declaration.

2. Each Party shall respect Article 31*bis* of the TRIPS Agreement, as well as the Annex and Appendix to the Annex related thereto, which entered into force on 23 January 2017.

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<sup>1</sup> Such utilisation may include that based upon the Patent Prosecution Highway.



## ARTICLE 14.40

### Extension of the period of protection conferred by a patent on pharmaceutical products<sup>1</sup> and agricultural chemical products<sup>2</sup>

With respect to the patents which are granted for inventions related to pharmaceutical products or agricultural chemical products, each Party shall, subject to the terms and conditions of its applicable laws and regulations, provide for a compensatory term of protection for a period during which a patented invention cannot be worked due to marketing approval process. As of the date of signing of this Agreement, the maximum compensatory term is stipulated as being five years<sup>3</sup> by the relevant laws and regulations of each Party.

## SUB-SECTION 7

### Trade secrets and undisclosed test or other data

## ARTICLE 14.41

### Scope of protection of trade secrets

1. Each Party shall ensure in its laws and regulations adequate and effective protection of trade secrets in accordance with paragraph 2 of Article 39 of the TRIPS Agreement.

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<sup>1</sup> For the United Kingdom, "pharmaceutical products" refers in this Article to medicinal products as defined in Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products.

<sup>2</sup> For the United Kingdom, "agricultural chemical products" refers in this Article to plant protection products as defined in Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

<sup>3</sup> For the United Kingdom, a further six months extension is possible in the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information.

2. For the purposes of this Article and Sub-Section 3 of Section C:

(a) "trade secret" means information that:

(i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(ii) has commercial value because it is secret; and

(iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret; and

(b) "trade secret holder" means any person lawfully in control of a trade secret.

3. For the purposes of this Article and Sub-Section 3 of Section C, each Party shall provide, in accordance with its laws and regulations, that at least the following conduct shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by wrongful means, or, alternatively, unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(i) having acquired the trade secret in a manner referred to in subparagraph (a);

(ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder; or

(iii) being in breach of a contractual or any other duty to limit the use of the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder; and

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known<sup>1</sup> that the trade secret had been obtained directly or indirectly from another person who was disclosing the trade secret in a manner referred to in subparagraph (b), including when a person induced another person to carry out the actions referred to in subparagraph (b).

4. Nothing in this Sub-Section shall require a Party to consider any of the following conduct as contrary to honest commercial practices or subject those conducts to the measures, procedures, and remedies referred to in Sub-Section 3 of Section C:

(a) independent discovery or creation by a person of the relevant information;

(b) 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;

(c) acquisition, use or disclosure of information required or allowed by its relevant laws and regulations;

(d) use by employees of their experience and skills honestly acquired in the normal course of their employment; or

(e) disclosure of information in the exercise of the right to freedom of expression and information.

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<sup>1</sup> For the purposes of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

## ARTICLE 14.42

### Treatment of test data in marketing approval procedure

1. Each Party shall, in accordance with its relevant laws and regulations, prevent applicants for marketing approval for pharmaceutical products<sup>1</sup> which utilise new active pharmaceutical ingredients from relying on or referring to undisclosed test or other data submitted to its competent authority by the first applicant for a certain period of time counted from the date of approval of that application. As of the date of entry into force of this Agreement, such period of time is stipulated as being no less than six years by the relevant laws and regulations of each Party.
  
2. If a Party requires as a condition for approving the marketing of agricultural chemical products<sup>2</sup> which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, that Party shall ensure that, in accordance with its relevant laws and regulations, applicants for marketing approval are either:
  - (a) prevented from relying on or referring to such data submitted to its competent authority by the first applicant for a period of at least 10 years counted from the date of approval of that application; or
  - (b) generally required to submit a full set of test data, even in cases where there was a prior application for the same product, for a period of at least 10 years, counted from the date of approval of a prior application.

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<sup>1</sup> For the United Kingdom, "pharmaceutical products" refers in this Article to medicinal products as defined in Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products.

<sup>2</sup> For the United Kingdom, "agricultural chemical products" refers in this Article to plant protection products as defined in Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

## SUB-SECTION 8

New varieties of plants

### ARTICLE 14.43

New varieties of plants

Each Party shall provide for the protection of new varieties of all plant genera and species in accordance with its rights and obligations under the 1991 UPOV Convention.

## SUB-SECTION 9

Unfair competition

### ARTICLE 14.44

Unfair competition

1. Each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris Convention<sup>1</sup>.

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<sup>1</sup> For greater certainty, it is understood by the Parties that Article 10*bis* of the Paris Convention covers acts of unfair competition in relation to the supply of services in accordance with their respective laws and regulations.

2. In connection with the respective systems of the United Kingdom and Japan for the management of their country-code top-level domain (ccTLD) domain names<sup>1</sup>, appropriate remedies<sup>2</sup> shall be available, in accordance with their respective laws and regulations, at least 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 trademark.

3. Each Party shall provide for effective protection against unauthorised use of trademarks through the implementation of paragraph (2) of Article 6*septies* of the Paris Convention.

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<sup>1</sup> For greater certainty, for the United Kingdom, this paragraph applies only to ".uk" domain names.

<sup>2</sup> The Parties understand that such remedies may include, among other things, revocation, cancellation and transfer of the registered domain name, injunctive relief against the person that registered or holds the registered domain name and against the domain name registry, or damages against the person that registered or holds the domain name.

## SECTION C

### Enforcement

#### SUB-SECTION 1

#### General provisions

#### ARTICLE 14.45

#### Enforcement – general

1. The Parties affirm their commitments under the TRIPS Agreement and in particular Part III thereof. Each Party shall provide for the following complementary measures, procedures and remedies<sup>1</sup> necessary to ensure the enforcement of intellectual property rights. The measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
2. The measures, procedures and remedies referred to in paragraph 1 shall be effective, proportionate and dissuasive<sup>2</sup> and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
3. Each Party shall make all reasonable efforts to:
  - (a) encourage the establishment of public or private advisory groups to address issues of at least counterfeiting and piracy; and

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<sup>1</sup> Without prejudice to the civil and administrative measures, procedures and remedies laid down in this Chapter, a Party may provide for other appropriate sanctions in cases where intellectual property rights have been infringed.

<sup>2</sup> For the purposes of this Article, "dissuasive" may be deemed by a Party to be synonymous with "deterrent" under Article 41 of the TRIPS Agreement.

- (b) ensure internal coordination among, and facilitate joint actions by, its competent authorities concerned with enforcement of intellectual property rights, subject to their available resources.

#### ARTICLE 14.46

##### Entitled applicants

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

- (a) the holders of intellectual property rights in accordance with its laws and regulations;
- (b) the trade secret holders referred to in Article 14.41; and
- (c) all other persons and entities, as far as permitted by and in accordance with its laws and regulations.



## SUB-SECTION 2

### Enforcement – civil remedies<sup>1 2</sup>

#### ARTICLE 14.47

##### Measures for preserving evidence

1. The judicial authorities of each Party shall have the authority to order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, in accordance with procedures which ensure the protection of confidential information as appropriate.
2. The judicial authorities of each Party shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, 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.
3. In cases of intellectual property rights infringements, each Party shall provide that in civil judicial proceedings its judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, materials and implements relevant to the act of infringement and of documentary evidence, either originals or copies thereof, relevant to the act of infringement.

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<sup>1</sup> This Sub-Section applies for intellectual property rights described in Sub-Sections 1 to 9 of Section B, excluding Sub-Section 7.

<sup>2</sup> For Japan, civil enforcement for geographical indications will be provided within the scope of Article 10*bis* of the Paris Convention and Article 22 of the TRIPS Agreement.

## ARTICLE 14.48

### Right of information

Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority, upon a justified request of the right holder, to order the infringer or the alleged infringer to provide the right holder or the judicial authorities, at least for the purpose of collecting evidence with relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons allegedly involved in the production and distribution of such goods or services and of their channels of distribution.

## ARTICLE 14.49

### Provisional and precautionary measures

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

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<sup>1</sup> For the purposes of this Article, a Party may provide that a "third party" includes an intermediary.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

## ARTICLE 14.50

### Corrective measures

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

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

## ARTICLE 14.51

### Injunctions

Each Party shall ensure that, if a judicial decision finds an infringement of an intellectual property right, its judicial authorities may issue an injunction aimed at prohibiting the continuation of the infringement against the infringer as well as, where appropriate, against a third party<sup>1</sup> over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right.

## ARTICLE 14.52

### Damages

1. Each Party shall provide that in civil judicial proceedings its judicial authorities have the authority to 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 each Party may consider, *inter alia*, any legitimate measure of value that may be submitted by the right holder, which may include lost profits.
3. A Party may provide in its laws and regulations presumptions<sup>2</sup> for determining the amount of damages referred to in paragraph 1.

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<sup>1</sup> For the purposes of this Article, a Party may provide that a "third party" includes an intermediary.

<sup>2</sup> This may include a presumption that the amount of damage is:

- (a) at least the amount that the right holder would have been entitled to receive for the exercise of his or her intellectual property rights, which may include reasonable royalty, to compensate a right holder for the unauthorised use of his or her intellectual property;
- (b) the profits earned by the infringer from the act of infringement; or
- (c) the quantity of the goods infringing the right holder's intellectual property rights and actually transferred to third persons, multiplied by the amount of profit per unit of goods which would have been sold by the right holder if there had not been the act of infringement.

## ARTICLE 14.53

### Costs

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

## ARTICLE 14.54

### Presumption of authorship or ownership

1. Each Party shall ensure that it is sufficient for the name of an author of a literary or artistic work to appear on the work in the usual manner in order for that author to be regarded as such, unless there is a proof to the contrary, and consequently to be entitled to institute infringement proceedings.
2. A Party may apply paragraph 1 *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

## ARTICLE 14.55

### Access to justice

The Parties recognise the importance of ensuring that right holders have access to justice and shall ensure that they have in place an effective judicial system and alternative dispute resolution mechanisms to allow right holders to enforce their rights without unwarranted delay and without unreasonable costs.

### SUB-SECTION 3

#### Enforcement of protection against misappropriation of trade secrets

#### ARTICLE 14.56

#### Civil procedures and remedies

1. Each Party shall provide for appropriate civil judicial procedures and remedies for a trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.
2. Each Party shall provide, in accordance with its laws and regulations, that its judicial authorities have the authority to order that the parties, their lawyers and other persons concerned in the relevant civil judicial proceedings, are not permitted to use or disclose any trade secret or alleged trade secret which the judicial authorities have identified as confidential<sup>1</sup>, in response to a duly reasoned application by an interested party and of which these parties, lawyers and other persons have become aware as a result of their participation in such civil judicial proceedings.

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<sup>1</sup> For greater certainty, a Party may provide that its judicial authorities may identify a trade secret as confidential through a protective order.

3. In the relevant civil judicial proceedings each Party shall provide that its judicial authorities have at least the authority to:

- (a) order injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;
- (b) order the person that knew or ought to have known<sup>1</sup> that he, she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;
- (c) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in civil judicial proceedings relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices. Such specific measures may include, in accordance with its laws and regulations, the possibility of restricting access to certain documents in whole or in part; of restricting access to hearings and their corresponding records or transcript; and of making available a non-confidential version of a judicial decision in which the passages containing trade secrets have been removed or redacted; and
- (d) impose sanctions on the parties, their lawyers and other persons concerned in the civil judicial proceedings for violation of judicial orders referred to in paragraph 2 concerning the protection of a trade secret or alleged trade secret produced in those proceedings.

4. A Party shall not be required to provide for the civil judicial procedures and remedies referred to in paragraph 1 when conduct contrary to honest commercial practices is carried out, in accordance with its relevant laws and regulations, to reveal misconduct, wrongdoing or illegal activity or to protect a legitimate interest recognised by law.

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<sup>1</sup> For the purposes of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

## SUB-SECTION 4

### Enforcement – border measures

#### ARTICLE 14.57

### Enforcement – border measures

1. With respect to goods imported or exported<sup>1</sup>, each Party shall adopt or maintain procedures under which a right holder may submit applications requesting its customs authority to suspend the release of or detain goods suspected of infringing trademarks, copyright and related rights, geographical indications<sup>2</sup>, patents, utility models, industrial designs, and plant variety rights (hereinafter referred to in this Article as "suspect goods") in its customs territory.
2. Each Party shall have in place electronic systems for the management by its customs authority of the applications referred to in paragraph 1 once they have been granted or recorded.
3. The customs authority of each Party shall decide on granting or recording the applications referred to in paragraph 1 within a reasonable period of time from the submission of the applications.
4. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.

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<sup>1</sup> For the purposes of this Article, "goods imported or exported" means, for the United Kingdom, goods under customs control, being brought into or taken out from its customs territory or being there in temporary storage, placed under a customs procedure or re-exported.

<sup>2</sup> With respect to geographical indications, Japan may comply with the obligations set out in this Article by providing for administrative measures to prevent the release into its domestic market of suspect goods by its appropriate competent authorities, in accordance with its laws and regulations.



5. With respect to goods imported or exported, the customs authority of each Party shall have the authority to act upon its own initiative to suspend the release of or detain suspect goods in the customs territory of that Party.<sup>1</sup>

6. Article 4.9 covers detection of suspect goods referred to in this Article.

7. Without prejudice to its laws and regulations relating to the privacy or confidentiality of information, a Party may authorise its customs authority to provide a right holder with information about goods, including a description and the quantities thereof, and if known, the name and address of the consignor, importer, exporter or consignee, and the country of origin of the goods, whose release has been suspended, or which have been detained.

8. A Party may adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in paragraphs 1 and 5, whether the suspect goods are infringing. In such case, the competent authorities shall have the authority to order the destruction of goods following a determination that the goods are infringing. A Party may have in place procedures allowing for the destruction of suspect goods without there being any need for the formal determination on the infringement, where the persons concerned agree or do not oppose to destruction.

9. If a Party requests right holders to bear the costs actually incurred for the storage or destruction of the goods whose release has been suspended, or which have been detained in accordance with paragraphs 1 and 5, those costs shall correspond to the services rendered for the storage or destruction of the goods.

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<sup>1</sup> For the purposes of this paragraph, Japan may provide for penalties to be applied in cases of customs transit or transshipment of infringing goods. For such purposes,

(a) "customs transit" means the customs procedure under which goods are transported under customs control from one customs office to another; and

(b) "transshipment" means the customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation.

10. There shall be no obligations to apply this Article to the import of goods put on the market in another country by or with the consent of the right holder. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage.

11. Consultations referred to in paragraph 4 of Article 4.3 shall also deal with the border measures by the customs authority of each Party under this Article.

12. The customs authorities of the Parties may cooperate on border measures against infringements of intellectual property covered by this Sub-Section.

13. Without prejudice to the responsibilities of the Committee on Intellectual Property referred to in Article 14.61, the Committee on Rules of Origin and Customs-Related Matters referred to in Article 4.14 may consider the possibility of cooperation on the following:

- (a) exchanging general information regarding seizures of infringing goods or suspect goods; and
- (b) holding a dialogue on specific topics of common interest concerning:
  - (i) general information regarding the use of risk management systems in the detection of suspect goods; and
  - (ii) general information regarding risk analysis in the fight against infringing goods.

## SUB-SECTION 5

### Enforcement – criminal remedies

#### ARTICLE 14.58

##### Criminal procedures and penalties

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale<sup>1</sup>.
2. Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods carried out on a commercial scale as unlawful activities subject to criminal penalties.<sup>2</sup>
3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation<sup>3</sup> and domestic use, in the course of trade and on a commercial scale, of a label or packaging:<sup>4</sup>
  - (a) to which a trademark has been applied without authorisation that is identical to, or cannot be distinguished from, a trademark 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 trademark is registered.

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<sup>1</sup> For the purposes of this Sub-Section, acts carried out on a commercial scale include at least those carried out as commercial activities for commercial advantage or financial gain.

<sup>2</sup> The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods carried out on a commercial scale is an unlawful activity subject to criminal penalties.

<sup>3</sup> A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

<sup>4</sup> A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.

4. Recognising the need to address the unauthorised copying<sup>1</sup> of a cinematographic work from a performance in a movie theatre that causes significant harm to a right holder in the market for that work, and recognising the need to deter such harm, each Party shall adopt or maintain measures, which shall at a minimum include, but need not be limited to, appropriate criminal procedures and penalties.

5. With respect to the offences for which this Article requires a Party to provide for criminal procedures and penalties, each Party shall ensure that criminal liability for aiding and abetting is available under its law.

6. With respect to the offences described in paragraphs 1 to 5, each Party shall provide the following:

- (a) Its judicial or other competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.
- (b) The judicial authorities of a Party have the authority in accordance with the laws and regulations of such Party to order the forfeiture of any assets derived from or obtained through the infringing activity.
- (c) The judicial authorities of a Party have the authority in accordance with the laws and regulations of such Party to order the forfeiture or destruction of:
  - (i) all counterfeit trademark goods or pirated copyright goods;

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<sup>1</sup> For the purposes of this Article, a Party may treat the term "copying" as synonymous with "reproduction".

- (ii) materials and implements that have been predominantly used in the creation of counterfeit trademark goods or pirated copyright goods; and
- (iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offence.

In cases in which counterfeit trademark goods and pirated copyright goods are not destroyed, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall further provide that forfeiture or destruction under this subparagraph shall occur without compensation of any kind to the defendant.

- (d) Its judicial or other competent authorities have the authority to release, or alternatively, provide access to, goods, material, implements and other evidence held by the relevant authority to a right holder for civil<sup>1</sup> infringement proceedings.

7. With respect to the offences described in paragraphs 1 to 5, a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.

8. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences specified in this Article for which the Party provides criminal procedures and penalties. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

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<sup>1</sup> A Party may also provide this authority in connection with administrative infringement proceedings.

## SUB-SECTION 6

### Enforcement in the digital environment

## ARTICLE 14.59

### Enforcement in the digital environment

1. The Parties shall ensure that enforcement procedures, to the extent set forth in Sub-Sections 2 and 5, are available under its law so as to permit effective action against an act of infringement of intellectual property rights which takes place in the digital environment, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.
2. Each Party shall take appropriate measures to limit the liability of, or remedies available against, online service providers for intellectual property rights infringement by the users of their online services or facilities, where the online service providers take action to prevent access to the materials infringing intellectual property rights in accordance with the laws and regulations of the Party.
3. Further to paragraph 1, each Party's enforcement procedures shall apply to the infringement of copyright or related rights over digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes, and to the infringement of trademarks, including through electronic commerce platforms and social media. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process and privacy.
4. Each Party shall endeavour to promote cooperative efforts within the business community to effectively address trademark and copyright or related rights infringement while preserving legitimate competition and, consistent with that Party's law, preserving fundamental principles such as freedom of expression, fair process and privacy.

5. A Party may provide, in accordance with its laws and regulations, its competent authorities<sup>1</sup> with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process and privacy.

6. The Parties shall, as appropriate, promote the adoption of measures to enhance public awareness of the importance of respecting intellectual property rights and the detrimental effect of intellectual property rights infringement. This may include cooperation with the business community, civil society organisations and right holder representatives.

## SECTION D

### Cooperation and institutional arrangements

#### ARTICLE 14.60

##### Cooperation

1. The Parties, recognising the growing importance of the protection of intellectual property in further promoting trade and investment between them, shall cooperate on intellectual property, including by exchange information on relations of a Party with third countries on matters concerning intellectual property, in accordance with their respective laws and regulations and subject to their available resources.

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<sup>1</sup> For the purposes of this Article, "competent authorities" may include the appropriate judicial, administrative or law enforcement authorities under the laws and regulations of a Party.

2. For the purposes of paragraph 1, cooperation may include exchange of information, sharing of experiences and skills and any other form of cooperation or activities as may be agreed between the Parties. Such cooperation may cover areas such as:

- (a) developments in domestic and international intellectual property policy;
- (b) intellectual property administration and registration systems;
- (c) education and awareness relating to intellectual property;
- (d) intellectual property issues relevant to:
  - (i) small and medium-sized enterprises;
  - (ii) science, technology and innovation activities; and
  - (iii) the generation, transfer and dissemination of technology;
- (e) policies involving the use of intellectual property for research, innovation and economic growth;
- (f) the implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of the WIPO;
- (g) technical assistance for developing countries;
- (h) best practices, projects and programmes related to the fight against infringements of intellectual property rights including measures in respect of websites registered outside the territories of the Parties; and
- (i) exploration of the possibility for further work on common efforts against infringements of intellectual property rights worldwide.



3. The Parties shall seek to cooperate with regard to activities for improving the international intellectual property regulatory framework, including by encouraging further ratification of existing international agreements and by fostering international harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations including the WTO and the WIPO.

#### ARTICLE 14.61

##### Committee on Intellectual Property

1. The Committee on Intellectual Property established pursuant to Article 23.3 (hereinafter referred to in this Article as "the Committee") shall be responsible for the effective implementation and operation of this Chapter.
2. The Committee shall have the following functions:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) exchanging information on legislative and policy developments on geographical indications and on any other matter of mutual interest in the area of geographical indications, including any matter arising from applicable requirements of specifications of geographical indications listed in Annex 14-B with respect to their protection under this Agreement;
  - (c) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property systems;
  - (d) reporting its findings and the outcomes of its discussions to the Joint Committee; and
  - (e) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 23.1.

3. The Committee shall make recommendations to the Joint Committee on amendments to Annex 14-A and Annex 14-B on request of a Party.
4. Each Party shall examine any request of the other Party concerning the amendment of Annex 14-B, in accordance with Article 14.34.
5. The Committee may invite representatives of relevant entities other than the Parties, including from the private sector, with the necessary expertise relevant to the issues to be discussed.

#### ARTICLE 14.62

##### Security exceptions

For the purposes of this Chapter, Article 73 of the TRIPS Agreement is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

#### ARTICLE 14.63

##### Dispute settlement

Article 14.60 shall not be subject to dispute settlement under Chapter 22.