

ANNEX XII

REFERRED TO IN ARTICLE 5

PROTECTION OF INTELLECTUAL PROPERTY

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SECTION I

GENERAL PROVISIONS

Article 1

Definition of Intellectual Property

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

Article 2

International Conventions

1. The Parties reaffirm their obligations under the TRIPS Agreement.
2. The Parties shall comply with the substantive provisions of the following multilateral agreements:
 - (a) Paris Convention of 20 March 1883 for the Protection of Industrial Property, as revised by the Stockholm Act of 1967 (hereinafter referred to as the “Paris Convention”);
 - (b) Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works, as revised by the Paris Act of 1971;
 - (c) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the Rome Convention);
 - (d) Patent Cooperation Treaty of 19 June 1970, as revised by the Washington Act of 2001;

- (e) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- (f) Nice Agreement of 15 June 1957 Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as revised by the Geneva Act of 1979;
- (g) World Intellectual Property Organization (hereinafter referred to as the "WIPO") Performances and Phonograms Treaty of 20 December 1996;
- (h) WIPO Copyright Treaty of 20 December 1996; and
- (i) International Convention for the Protection of New Varieties of Plants 1978 (1978 UPOV Convention), or the International Convention for the Protection of New Varieties of Plants 1991 (1991 UPOV Convention).

3. Without prejudice to confidentiality and relations with non-parties, the Parties seek to promptly hold expert meetings, upon request of any Party, on activities relating to conventions relating to the protection of intellectual property, whether or not referred to in this Article, or to future international conventions on harmonisation, administration, enforcement and normal exploitation of intellectual property rights and on activities in international organisations, such as the WTO, as well as on relations of the Parties with non-parties on matters concerning intellectual property.

4. In developing a mutually supportive trade relationship between the Parties in the intellectual property context, any principles, rules, institutions and processes involved should be consistent with the standards and norms of the WTO, WIPO and other relevant international institutions.

SECTION II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

Article 3

Copyright and Related Rights

1. The Parties shall ensure in their respective domestic law adequate and effective protection of copyright in works including typographical arrangements of published editions,¹ broadcasts and cable programmes and related rights in audio-visual performances.

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It is understood that protection of typographical arrangements of published editions in the EFTA States will, in case of litigation, depend on the judicial authorities' assessment on whether the criteria of individuality are satisfied.

2. In respect of rental rights for copyright works in computer programs, sound recordings, films, artistic and literary works in the form of comics, a Party shall provide authors and their successors in title the right to authorise or to prohibit the commercial rental to the public of the originals and copies of their copyright works.

3. Notwithstanding paragraph 2, a Party that has a system in force of equitable remuneration of authors for the rental of copies of their works may maintain that system provided that the commercial rental of works is not giving rise to the material impairment of the exclusive right of reproduction of authors.

4. The Parties may provide for limited exceptions in special cases which do not conflict with the normal exploitation of the copyright work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 4

Undisclosed Information

1. The Parties shall protect undisclosed information in accordance with Article 39 of the TRIPS Agreement.

2. For pharmaceuticals, including chemical entities and biologics, and agricultural chemical products that require marketing approval by a competent authority, the Parties shall prevent applicants for marketing approval for such products from relying on, or referring to, undisclosed test data or other data submitted to the competent authority by the first applicant for a period, counted from the date of marketing approval, of at least eight years for pharmaceuticals and at least 10 years for agrochemical products.

3. Reliance on or reference to such data may be permitted:

- (a) in order to avoid unnecessary duplication of tests of agrochemical products involving vertebrate animals, provided that the first applicant is adequately compensated; or
- (b) where a written consent from the first applicant is presented.

Article 5

Patents

The Parties shall ensure in their respective domestic law at least adequate and effective patent protection for inventions in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. This means protection at a level corresponding to that in Article 27.1 of the TRIPS Agreement. In addition to what is provided for in Article 27.2 of the TRIPS Agreement, the Parties may exclude from patentability:

- (a) any invention of a method for treatment of the human or animal body by surgery or therapy or for diagnostic methods practised on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods; and
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof.

Article 6

Industrial Designs

1. The Parties shall ensure in their respective domestic law adequate and effective protection of registered industrial designs by providing in particular a period of protection of at least 25 years in total. The Parties may provide for a shorter period of protection for designs of component parts used for the purpose of the repair of a product.
2. The Parties shall provide copyright protection for industrial designs if they may be considered as works of applied art and satisfy the general condition required for copyright protection by their respective domestic law.

Article 7

Layout-Designs (Topographies) of Integrated Circuits

1. The Parties shall ensure in their respective domestic law adequate and effective protection of layout-designs (topographies) of integrated circuits.
2. For the purposes of the Agreement, a layout-design or topography of integrated circuits shall be defined in accordance with Article 35 of the TRIPS Agreement, referring to Article 2 of the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington, on 26 May 1989.

Article 8

Trademarks

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including combinations of words, personal names, letters, numerals, figurative elements, shapes of goods, sounds and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, the Parties

may make registrability depend on distinctiveness acquired through use. Parties may require, as a condition of registration, that signs be visually perceptible.

2. The Parties reaffirm the importance of, and shall be guided by, wherever appropriate, the principles contained in the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 1999, and the WIPO Joint Recommendation Concerning Provisions on the Protection of Marks and other Industrial Property Rights in Signs, on the Internet, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 2001.

3. The Parties also reaffirm the importance of, and shall be guided by, wherever appropriate, the standardised procedural aspects of trademark registration and licensing contained in the Singapore Treaty on the Law of Trademarks which enables domestic trademark authorities to take advantage of the efficiency in using modern communication technologies to process and manage evolving trademark rights, and helps trademark owners contain transaction costs by increasing the efficiency of trademark services.

4. The Parties shall, where appropriate, facilitate interested parties to prevent the use of an indication of source for services from being used or registered as trademarks in a manner which misleads the public as to the true place of origin or constitutes an act of unfair competition.

Article 9

Geographical Indications and Indications of Source

1. The Parties shall ensure in their respective domestic law adequate and effective means to protect geographical indications with regard to all goods, and indications of source and names and flags of countries or territories with regard to all goods.

2. For the purposes of the Agreement, “geographical indications” are indications, which identify goods as originating in a Party, or a region or locality in that Party, where a given quality, reputation or other characteristic of those goods is essentially attributable to their geographical origin.

3. For the purposes of the Agreement, “indications of source” are direct or indirect references to the geographical origin of goods. Nothing in the Agreement shall require a Party to amend its legislation if, at the date of entry into force of the Agreement, in its domestic law, it limits the protection of indications of source to cases where a given quality, reputation or other characteristic of goods is essentially attributable to their geographical origin.

4. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall provide the legal means for interested parties to prevent the use of a geographical indication or of an indication of source for goods not originating in the place indicated by the designation in question in a manner which misleads the public as to the

geographical origin of those goods or which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

5. The Parties shall, where appropriate, facilitate interested parties to prevent the use of a geographical indication for agricultural products and foodstuffs for identical or similar products not originating in the place indicated by the designation in question.

6. The Parties shall provide whatever legal means to prevent any incorrect or misleading use or registration of country names of a Party as trademarks.

7. The Parties shall provide whatever legal means to prevent armorial bearings, flags and other State or regional emblems of a Party from being used or registered as trademarks or designs in non-compliance with the conditions laid down in the domestic law of that Party. This protection shall also apply to signs that may be confused with armorial bearings, flags and other State or regional emblems of the Parties.

SECTION III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Article 10

General

The Parties shall provide whatever legal means for interested parties to prevent trade in goods infringing intellectual property rights.

Article 11

Suspension of Release

1. The Parties deem it highly relevant for right holders and the relevant authorities to have adequate means at disposal to prevent cross-border trade of counterfeit trademark and pirated copyright goods.

2. The Parties shall adopt procedures to enable a right holder, who has valid grounds for suspecting that importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with the competent authorities, administrative or judicial, for the suspension of the release into free circulation of such goods by the customs authorities. The Parties may adopt similar procedures for suspected exportation or transhipment of the relevant goods.

3. The Parties shall provide that its competent authorities shall have the authority to suspend the release of suspected counterfeit trademark or pirated copyright goods into

free circulation, if they are aware of or have received relevant information of such goods, with respect to importation or exportation.

4. There shall be no obligation to apply procedures set forth in this Article to the suspension of the release into free circulation of goods put on the market in another country by or with the consent of the right holder.

Article 12

Right of Inspection

1. In relation to Article 11, the competent authorities, administrative or judicial as the case may warrant, shall give the applicant for the suspension of goods and other persons involved in the suspension the opportunity to inspect goods whose release has been suspended or which have been detained.

2. When examining goods referred to in paragraph 1, the competent authorities may take samples and, according to the rules in force in the Party concerned, hand them over or send them to the right holder, at his express request, strictly for the purposes of analysis and of facilitating the subsequent procedure. Where circumstances allow, samples must be returned on completion of the technical analysis and, where applicable, before goods are released or their detention is lifted. Any analysis of these samples shall be carried out under the sole responsibility of the right holder.

SECTION IV

CO-OPERATION

Article 13

Co-operation in the Field of Intellectual Property

The Parties, recognising the role of intellectual property in the creative or innovative process, shall, in accordance with their capacities and their policy priorities, enhance their co-operation in the field of intellectual property with a view to promoting economic growth, social development and cultural diversity.
