

Without Prejudice

COVER PAGE

INTELLECTUAL PROPERTY [RIGHTS] CHAPTER

Consolidated Text

CLEAN

05 Oct 2015

WikiLeaks

Without Prejudice

CHAPTER QQ¹

{INTELLECTUAL PROPERTY RIGHTS / INTELLECTUAL PROPERTY}

{Section A: General Provisions}

Article QQ.A.1: {Definitions}

For the purposes of this Chapter **intellectual property** refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement.

Article QQ.A.X: {Objectives}

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article QQ.A.Y: {Principles}

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

QQ.A.Z: {Understandings in respect of this Chapter}

Having regard to the underlying public policy objectives of national systems, the Parties recognize the need to:

- promote innovation and creativity;
- facilitate the diffusion of information, knowledge, technology, culture and the arts;
- and

¹ Negotiator's Note: Section and Article titles and headings appear in this text on a without prejudice basis. Parties have agreed to defer consideration of the need for, and drafting of, Section and Article titles and headings. Such titles or headings that appear in braces (i.e., "{ }") are included for general reference and information purposes only.

Without Prejudice

- foster competition and open and efficient markets;

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

Article QQ.A.5: {General Provisions / Nature and Scope of Obligations}

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, and enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection and enforcement does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article QQ.A.7: {Understandings Regarding Certain Public Health Measures}

1. The Parties affirm their commitment to the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2). In particular, the Parties have reached the following understandings regarding this Chapter:

- (a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.
- (b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82), as well as the Decision on the Amendment of the TRIPS Agreement, adopted by the General Council, 6 December 2005 and the WTO General Council Chairperson's statement accompanying the Decision (WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.
- (c) With respect to the aforementioned matters, if any waiver of any provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity

Without Prejudice

with that waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment.

2. Each Party shall notify the WTO of its acceptance of the Protocol amending the TRIPS Agreement done at Geneva on December 6, 2005.

Article QQ.A.8: {International Agreements}

1. Each Party affirms that it has ratified or acceded to the following agreements:
 - (a) *Patent Cooperation Treaty* (1979);
 - (b) *Paris Convention for the Protection of Industrial Property* (1967); and
 - (c) *Berne Convention for the Protection of Literary and Artistic Works* (1971).
2. Each Party shall ratify or accede to each of the following agreements, where it is not already a Party to such agreement, by the date of entry into force of this Agreement for the Party concerned:
 - (a) *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989);
 - (b) *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980;
 - (c) *International Convention for the Protection of New Varieties of Plants* (1991) (UPOV Convention);
 - (d) *Singapore Treaty on the Law of Trademarks* (2006)²;
 - (e) *WIPO Copyright Treaty* (1996); and
 - (f) *WIPO Performances and Phonograms Treaty* (1996).

² A Party may satisfy the obligation in Article QQ.A.8.2(a) and (d) by ratifying or acceding to either the Protocol relating to the Madrid Agreement concerning the International Registration of Marks (1989) or the Singapore Treaty on the Law of Trademarks (2006).

Without Prejudice

Article QQ.A.9: {National Treatment}

1. In respect of all categories of intellectual property covered in this Chapter,³ each Party shall accord to nationals⁴ of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection⁵ of such intellectual property rights.
2. With respect to secondary uses of phonograms by means of analog communications and free over-the-air broadcasting and other non-interactive communications to the public, however, a Party may limit the rights of the performers and producers of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.
3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:
 - (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
 - (b) not applied in a manner that would constitute a disguised restriction on trade.
4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

³ For greater certainty, nothing in this Agreement limits Parties from taking an otherwise permissible derogation from national treatment with respect to copyrights and related rights that are not covered under Section G (Copyright and Related Rights) of this Chapter.

⁴ For purposes of Articles (QQ.A.9.1-2 (National Treatment and Judicial/Admin Procedures), QQ.D.2.a (GIs/Nationals), and QQ.G.14.1 (Performers/Phonograms/Related Rights)), a “national of a Party” shall mean, in respect of the relevant right, a person of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in (Article QQ.A.8 (International Agreements)) and the TRIPS Agreement. Negotiator’s note: Parties to remember to insert correct cross references to other treaties including WPPT (Article 3) depending on whether chapter includes an obligation to accede to a list of treaties.

⁵ For purposes of this paragraph (Article QQ.A.9.1), “protection” shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for purposes of paragraph 1, “protection” also includes the prohibition on circumvention of effective technological measures set out in Article QQ.G.10 and the provisions concerning rights management information set out in Article QQ.G.13.

{For greater certainty}, “matters affecting the use of intellectual property rights covered by this Chapter” in respect of works, performances and phonograms, include any form of payment, such as licensing fees, royalties, equitable remuneration, or levies, in respect of uses that fall under the copyright and related rights in this Chapter.

Without Prejudice

Article QQ.A.10: {Transparency}

1. Further to Article ZZ.2 {Publication} and QQ.H.3.1 {Enforcement Practices With Respect to Intellectual Property Rights}, each Party shall endeavor to make available on the Internet its laws, regulations, procedures and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.
2. Each Party shall, subject to its national law, endeavor to make available on the Internet information that it makes public concerning applications for trademarks, geographical indications, designs, patents and plant variety rights^{6,7}.
3. Each Party shall, subject to its national law, make available on the Internet information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents and plant variety rights, sufficient to enable the public to become acquainted with the registration or granted rights⁸.

Article QQ.A.10bis: {Application of Agreement to Existing Subject Matter and Prior Acts}

1. Except as it otherwise provides, including in Article QQ.G.8 (Berne 18/TRIPS 14.6), this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.
2. Except as provided in Article QQ.G.8 (Berne 18/TRIPS 14.6), a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.
3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Article QQ.A.11: {Exhaustion of IP Rights}

Nothing in this Agreement prevents a Party from determining whether and under what conditions the exhaustion of intellectual property rights applies under its legal system⁹.

⁶ For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under QQ.C.7 {Electronic Trademarks System}.

⁷ For greater certainty, it is understood that paragraph 2 does not require Parties to make available the entire dossier for the relevant application on the Internet.

⁸ For greater certainty, it is understood that paragraph 3 does not require Parties to make available the entire dossier for the relevant registered or granted right on the Internet.

⁹ For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.

Without Prejudice

Section B: Cooperation

Article QQ.B.1: {Contact Points for Cooperation}

Further to TT.3 {Contact Points for Cooperation and Capacity Building}, each Party may designate one or more contact points for the purpose of cooperation under this section.

Article QQ.B.2: {Cooperation Activities and Initiatives}

The Parties shall endeavor to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the intellectual property offices of the Parties, or other institutions as determined by each Party. Cooperation may cover such areas 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 & 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) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO; and
- (g) technical assistance for developing countries.

Article QQ.B.3: {Patent Cooperation/Work Sharing}

1. The Parties recognize the importance of improving quality and efficiency in their patent registration systems and simplifying and streamlining their patent office procedures and processes for the benefit of all users of the system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavor to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of other Parties. This may include:

- (a) making search and examination results available to the patent offices of

Without Prejudice

other Parties¹⁰; and

- (b) exchanges of information on quality assurance systems and quality standards relating to patent examination.

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavor to cooperate to reduce differences in the procedures and processes of their respective patent offices.

4. Parties recognize the importance of giving due consideration to ratifying or acceding to the *Patent Law Treaty*; or in the alternative adopting or maintaining procedural standards consistent with the objective of the *Patent Law Treaty*.

Article QQ.B.x: {Public Domain}

1. The Parties recognize the importance of a rich and accessible public domain.
2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of subject matter that has fallen into the public domain.

Article QQ.B.4: {Cooperation on Request}

Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, and on request and on terms and conditions mutually agreed upon between the Parties involved.

Article QQ.B.xx: {Cooperation in the Areas of Traditional Knowledge}¹¹

XX.1. The Parties recognize the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.

XX.2. The Parties shall endeavor to cooperate through their respective agencies responsible for intellectual property or other relevant institutions to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.

XX.3. The Parties shall endeavor to pursue quality patent examination. This may include:

¹⁰ Parties recognize the importance of multilateral efforts to promote the sharing and use of search and examination results, with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

¹¹ Negotiator's Note: NZ agrees ad ref to remove former paragraph 6 from this Chapter on the basis that it is placed in Chapter AA.

Without Prejudice

- (a) in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
- (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;
- (c) where applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and
- (d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

{Section C: Trademarks}

Article QQ.C.1: {Types of Signs Registrable as Trademarks}

No Party may require, as a condition of registration, that a sign be visually perceptible, nor may a Party deny registration of a trademark solely on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.

Article QQ.C.2: {Collective and Certification Marks}

Each Party shall provide that trademarks shall include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its domestic law, provided that such marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system¹².

Article QQ.C.3: {Use of Identical or Similar Signs}

Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent third parties not having the owner's consent from using in the course of

¹² For purposes of this Chapter, **geographical indication** means indications that identify a good as originating in the territory of a party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Consistent with this definition, any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting GIs, or a combination of such means. {Chair's note: address placement in legal scrub.}

Without Prejudice

trade identical or similar signs, including subsequent geographical indications,^{13,14} for goods or services that are related to those goods or services in respect of which the owner's 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.

Article QQ.C.4: {Exceptions}

Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interest of the owner of the trademark and of third parties¹⁵.

Article QQ.C.5: {Well Known Trademarks}

1. No Party may require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.
2. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark,¹⁶ whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.
3. Each Party recognizes the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* (1999) as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO.
4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark,¹⁷ for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well known trademark. A Party may

¹³ For greater certainty, the exclusive right in this Article applies to cases of unauthorized use of geographical indications with goods for which the trademark is registered, where the use of that geographical indication in the course of trade would result in a likelihood of confusion as to source of the goods.

¹⁴ For greater certainty, the Parties understand that Article QQ.C.3 should not be interpreted to affect their rights and obligations under articles 22 and 23 of the TRIPs Agreement.

¹⁵ Drafter's note: For greater certainty, the Parties understand that Article QQ.C.4 applies to provisions relating to rights conferred by trademarks in this Chapter.

¹⁶ Where a Party determines whether a mark is well-known in the Party, the Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

¹⁷ It is understood that such a well-known trademark is one that was already well-known before the registration or use of the first-mentioned trademark.

Without Prejudice

also provide such measures *inter alia* in cases in which the subsequent trademark is likely to deceive.

Article QQ.C.6: {Examination, Opposition and Cancellation / Procedural Aspects}

Each Party shall provide a system for the examination and registration of trademarks which shall include, *inter alia*:

- (a) providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark;
- (b) providing the opportunity for the applicant to respond to communications from the competent authorities, to contest an initial refusal, and to appeal judicially any final refusal to register a trademark;
- (c) providing an opportunity to oppose the registration of a trademark or to seek cancellation¹⁸ of a trademark; and
- (d) requiring that administrative decisions in opposition and cancellation proceedings be reasoned and in writing. Written decisions may be provided electronically.

Article QQ.C.7: {Electronic Trademarks System}

Each Party shall provide:

- (a) a system for the electronic application for, and maintenance of, trademarks; and
- (b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

Article QQ.C.8: {Classification of Goods and Services}

Each Party shall adopt or maintain a trademark classification system that is consistent with the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (Nice Classification) of June 15, 1957, as revised and amended. Each Party shall provide that:

- (a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification¹⁹; and

¹⁸ For greater certainty, cancellation for purposes of this Section may be implemented through nullity or revocation proceedings.

¹⁹ Parties that rely on translations of the Nice Classification are required to follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

Without Prejudice

- (b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

Article QQ.C.9: {Term of Protection for Trademarks}

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

Article QQ.C.10: {Non-recordal of a license}

No Party may require recordal of trademark licenses: to establish the validity of the license; or as a condition for use of a trademark by a licensee, to be deemed to constitute use by the holder in proceedings relating to the acquisition, maintenance and enforcement of trademarks.

Article QQ.C.12: {Domain Name Cybersquatting}

1. In connection with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, the following shall be available:

- (a) an appropriate procedure for the settlement of disputes, based on, or modelled along the same lines as, the principles established in the Uniform Domain-Name Dispute-Resolution Policy, or that is: (i) designed to resolve disputes expeditiously and at low cost, (ii) fair and equitable, (iii) not overly burdensome, and (iv) does not preclude resort to court litigation; and
- (b) online public access to a reliable and accurate database of contact information concerning domain-name registrants;

in accordance with each Party's laws and, where applicable, relevant administrator policies regarding protection of privacy and personal data.

2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies²⁰, shall be available, at least in cases where a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.

²⁰ It is understood that such remedies may but need not include, for example, revocation, cancellation, transfer, damages, or injunctive relief.

Without Prejudice

{Section D: Geographical Indications}

Article QQ.D.1: {Recognition of Geographical Indications}

The Parties recognize that geographical indications may be protected through a trademark or sui generis system or other legal means.

Article QQ.D.2: {Administrative Procedures for the Protection or Recognition of Geographical Indications}

Where a Party provides administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a sui generis system, the Party shall with respect to applications for such protection or petitions for such recognition:

- (a) accept those applications or petitions without requiring intercession by a Party on behalf of its nationals²¹;
- (b) process those applications or petitions without imposition of overly burdensome formalities;
- (c) ensure that its regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions;
- (d) make available information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and allow applicants, petitioners, or their representatives to ascertain the status of specific applications and petitions;
- (e) ensure that those applications or petitions are published for opposition and provide procedures for opposing geographical indications that are the subject of applications or petitions; and
- (f) provide for cancellation²² of the protection or recognition afforded to a geographical indication.

Article QQ.D.3: {Grounds of Opposition and Cancellation}²³

1. Where a Party protects or recognizes a geographical indication through the procedures referred to in Article QQ.D.2, that Party shall provide procedures that allow

²¹ Subparagraph (a) shall also apply to judicial procedures that protect or recognize a geographical indication.

²² For greater certainty, cancellation for purposes of this Section may be implemented through nullity or revocation proceedings.

²³ A Party is not required to apply Article QQ.D.3 to geographical indications for wines and spirits or applications for such geographical indications.

Without Prejudice

interested persons to object to the protection or recognition of a geographical indication, and that allow for any such protection or recognition to be refused or otherwise not afforded, at least on the following grounds:

- (a) the geographical indication is likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the Party;
- (b) the geographical indication is likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law; and
- (c) the geographical indication is a term customary in common language as the common name²⁴ for the relevant goods in that Party's territory.

3. Where a Party has protected or recognized a geographical indication through the procedures referred to in Article QQ.D.2, that Party shall provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow for the protection or recognition to be cancelled, at least on the grounds listed in paragraph 1. A Party may provide that the grounds in QQ.D.3.1 (a), (b) and (c) shall apply as of the time of filing the request for protection or recognition of a geographical indication in the territory of the Party²⁵.

2bis. No Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected or recognized term has ceased meeting the conditions upon which the protection or recognition was originally granted in the Party.

3. Where a Party has in place a *sui generis* system for protecting unregistered geographical indications by means of judicial procedures, a Party shall provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication where any of the circumstances identified in paragraph 1(i), paragraph 1(ii) and paragraph 1(iii) have been established²⁶. Such a Party shall also provide a process that allows interested persons to commence a proceeding on such grounds.

²⁴ For greater certainty, where a Party provides for the procedures in QQ.D.2 and QQ.D.3 to be applied to geographical indications for wines and spirits or applications for such geographical indications, the Parties understand nothing shall require a Party to protect or recognize a geographical indication of any other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party.

²⁵ For greater certainty, where the grounds listed in paragraph 1 did not exist in a Party's law as of the time of filing of the request for protection or recognition of a geographical indication under Article QQ.D.2, a Party is not required to apply such grounds for the purposes of paragraph 2 or Article QQ.D.3.4 in relation to such geographical indication.

²⁶ As an alternative to paragraph 3, where a Party has in place a *sui generis* system of the type referred to in paragraph 3 as of the relevant date in QQ.D.5.6, that Party shall at least provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication where the circumstances identified in paragraph 1(c) have been established.

Without Prejudice

4. Where a Party provides protection or recognition of any geographical indication, pursuant to the procedures referred to in Article QQ.D.2, to the translation or transliteration of such geographical indication, the Party shall make available procedures that are equivalent to, and grounds that are the same as, those set forth in paragraphs 1 and 2 with respect to such translation or transliteration.

Article QQ.D.8: {Guidelines for determining whether a term is the term customary in the common language}

With respect to the procedures in D.2 and D.3 in determining whether a term is the term customary in common language as the common name for the relevant goods in a Party's territory, that Party's authorities shall have the authority to take into account how consumers understand the term in that Party's territory. Factors relevant to such consumer understanding may include:

- (a) whether the term is used to refer to the type of product in question, as indicated by competent sources such as dictionaries, newspapers, and relevant websites; and
- (b) how the product referenced by the term is marketed and used in trade in the territory of that Party.

Article QQ.D.9: {Multi-Component Terms}

With respect to the procedures in D.2 and D.3, an individual component of a multi-component term that is protected as a geographical indication in a Party shall not be protected in that Party where the individual component is a term customary in the common language as the common name for the associated goods.

Article QQ.D.6: {Date of Protection of a Geographical Indication}

Where a Party grants protection or recognition to a geographical indication through the procedures referred to in Article QQ.D.2, such protection or recognition shall commence no earlier than the filing date²⁷ in the Party or the registration date in the Party, as applicable.

Article QQ.D.13: {Country Names}²⁸

Each Party shall provide the legal means for interested parties to prevent commercial use of country names of the Parties in relation to goods in a manner which misleads consumers as to the origin of such goods.

²⁷ For greater certainty, the filing date referenced in this paragraph includes the priority filing date under the Paris Convention, where applicable.

²⁸ Negotiators' note: Legal scrub to determine placement in TM vs GI vs standalone.

Without Prejudice

Article QQ.D.5: {International Agreements}

1. Where a Party protects or recognizes a geographical indication pursuant to an international agreement as of the applicable date determined in paragraph 6 involving a Party or a non-Party, and where that geographical indication is not protected pursuant to the procedures in Article QQ.D.2²⁹ or QQ.D.3.3, that Party shall:

- (a) apply at least procedures and grounds that are equivalent to those in QQ.D.2(e) and Article QQ.D.3.1, as well as
 - (i) make available information sufficient to allow the general public to obtain guidance concerning the procedures for protecting or recognizing such a geographical indication; and allow interested persons to ascertain the status of requests for protection or recognition;
 - (ii) make available to the public over the Internet details regarding the terms that the Party is considering recognizing or protecting through an international agreement with a Party or a non-party including specifying whether protection or recognition is being considered for any translations or transliterations of those terms, and with respect to multi-component terms, specifying the components, if any, for which protection or recognition is being considered, or the components that are disclaimed;
 - (iii) in respect of opposition procedures, provide a reasonable period of time for interested persons to oppose to the protection or recognition of those terms. That period shall provide a meaningful opportunity for interested persons to participate in an opposition process; and
 - (iv) inform the other Parties, no later than the start of that opposition period, of the opportunity to oppose.

2. In respect of existing international agreements that permit the protection or recognition of a new geographical indication, a Party shall^{30,31}:

- (a) apply QQ.D.5.1.(a)(ii);

²⁹ Each Party shall apply QQ.D.8 and QQ.D.9 when determining whether to grant protection or recognition of a geographical indication pursuant to paragraph 1.

³⁰ In respect of existing international agreements that have geographical indications that have been identified but have not yet received protection or recognition in the territory of the Party who is a party to that agreement, the Party may fulfil the obligations of Paragraph 2 by complying with the obligations of Paragraph 1.

³¹ A Party may comply with this Article by applying Article QQ.D.2 and Article QQ.D.3.

Without Prejudice

- (b) provide an opportunity for interested parties to comment regarding the protection or recognition of those terms for a reasonable period of time before such a term is protected or recognized; and
 - (c) inform the other Parties of the opportunity to comment no later than the start of the period for comment.
- 3. For the purposes of this Article, a Party shall not preclude the possibility that the protection or recognition of a geographical indication could cease.
- 4. For purposes of this Article, a Party is not required to apply Article QQ.D.3, or obligations equivalent to Article QQ.D.3, to geographical indications for wines and spirits or applications for such geographical indications.
- 5. Protection or recognition provided pursuant to paragraph 1 shall commence no earlier than the date on which such agreement enters into force, or if that Party grants such protection or recognition on a date after entry into force of the agreement, on that later date.
- 6. No Party shall be required to apply this Article, to geographical indications that have been specifically identified in, and that are protected or recognized pursuant to, an international agreement involving a Party or a non-Party, provided that:
 - (a) such agreement was concluded or agreed in principle³² prior to the date of conclusion or agreement in principle of this Agreement, or in the alternative;
 - (b) such agreement was ratified by a Party prior to the date of ratification of this Agreement by that Party, or in the alternative;
 - (c) such agreement entered into force for a Party prior to the date of entry into force of this Agreement for that Party.

{Section E: Patents / Undisclosed Test or Other Data}

{Subsection A: General Patents}

Article QQ.E.1: {Patentable Subject matter}

- 1. Subject to paragraphs 3 and 4, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application³³.

³² For the purpose of this Article, “agreed in principle” refers to an agreement with another government or government entity or international organization in respect of which a political understanding has been reached and the negotiated outcomes of the agreement have been publically notified/announced.

³³ For purposes of this Section, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively. In determinations

Without Prejudice

2. Subject to paragraphs 3 and 4 and consistent with paragraph 1, each Party confirms that patents are available for inventions claimed as at least one of the following: new uses of a known product, new methods of using a known product, or new processes of using a known product. A Party may limit such processes to those that do not claim the use of the product as such³⁴.
3. Each Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law. Each Party may also exclude from patentability: diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; animals other than microorganisms; and essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes.
4. Each Party may also exclude from patentability plants other than microorganisms. However, consistent with paragraph 1 and subject to paragraph 3, each Party confirms that patents are available at least for inventions that are derived from plants³⁵.

Article QQ.E.2: {Grace Period}

Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure^{36,37}:

- (a) was made by the patent applicant or by a person who obtained the information directly or indirectly from the patent applicant; and
- (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party.

regarding inventive step (or non-obviousness), each Party shall consider whether the claimed invention would have been obvious to a person skilled or having ordinary skill in the art having regard to the prior art.

³⁴ Drafter's Note: The Parties understand that Article QQ.A.5 applies to the provisions of this Chapter, including this paragraph. Accordingly, CL no longer believes that having an express reference is necessary.

³⁵ Drafter's Note: The Parties understand that Article QQ.A.5 applies to the provisions of this Chapter, including this paragraph. Accordingly, CL no longer believes that having an express reference is necessary.

³⁶ A Party shall not be required to disregard information contained in applications for, or registrations of, intellectual property rights made available to the public or published by a patent office unless erroneously published or unless the application was filed without the consent of the inventor or their successor in title by a third party who obtained the information directly or indirectly from the inventor.

³⁷ For greater certainty, a Party may limit application of this provision to disclosures made by or obtained directly or indirectly from the inventor or joint inventor. For greater certainty, a Party may provide that, for purposes of this article information obtained directly or indirectly from the patent applicant may be information contained in the public disclosure that was authorized by, or derived from, the patent applicant.

Without Prejudice

Article QQ.E.3: {Patent Revocation}

1. Each Party shall provide that a patent may be cancelled, revoked or nullified only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for cancelling, revoking or nullifying a patent or holding a patent unenforceable.
2. Notwithstanding Paragraph 1, a Party may provide that a patent may be revoked, provided it is done in a manner consistent with Article 5A of the Paris Convention and the TRIPS Agreement.

Article QQ.E.4: {Exceptions}

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.

Article QQ.E.5: {Other use without authorization of the right holder}

The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 of the TRIPS Agreement, or waivers or amendments to that Article that the Parties accept³⁸.

Article QQ.E.6: {Patent filing}

Each Party shall provide that where an invention is made independently by more than one inventor, and separate applications claiming that invention are filed with or for the relevant authority of the Party, that Party shall grant the patent on the application that is patentable and that has the earliest filing, or if applicable, priority date³⁹, unless that application has, prior to publication⁴⁰, been withdrawn, abandoned or refused.

³⁸ Drafters note: The Parties have affirmed TRIPS Article 28 in Chapter AA, and therefore do not believe that an additional reference in this Article is necessary. Accordingly, US agrees to withdraw the reference to TRIPS Article 28.

³⁹ A Party shall not be required to apply this provision in cases involving derivation or in situations involving any application that has or had at any time at least one claim having an effective filing date before this agreement comes into force or any application that has or had at any time a priority claim to an application that contains or contained such a claim.

⁴⁰ For greater certainty, a Party may grant the patent to the subsequent application that is patentable, when an earlier application has been withdrawn, abandoned, or refused, or is not prior art against the subsequent application.

Without Prejudice

Article QQ.E.7: {Amendments, corrections and observations}

Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations in connection with their applications⁴¹.

Article QQ.E.11: {Publication of Patent Applications}

1. Recognizing the benefits of transparency in the patent system, each Party shall endeavor to publish unpublished pending patent applications promptly after the expiry of 18 months from the filing date or, if priority is claimed, from the priority date.
2. Where a pending application is not published promptly under paragraph 1, Parties shall publish such application or the corresponding patent as soon as practicable.
3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiry of the period mentioned in paragraph 1.

Article QQ.E.11bis: {Information relating to published patent applications and issued patents}

For published patent applications and issued patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on or after the date of entry into force of the Agreement for that Party:

- (a) search and examination results, including details of, or information related to, relevant prior art searches;
- (b) non confidential communications from applicants, where appropriate; and
- (c) patent and non-patent related literature citations submitted by applicants, and relevant third parties.

Article QQ.E.12: {Patent Term Adjustment for Patent Office Delays}

1. Each Party shall make best efforts to process patent applications in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.
2. Each Party may provide procedures for patent applicants to request to expedite the examination of their patent application.

⁴¹ Each Party may provide that such amendments do not go beyond the scope of the disclosure of the invention as of the filing date.

Without Prejudice

3. If there are unreasonable delays in a Party's issuance of patents, that Party shall provide the means to, and at the request of the patent owner, shall, adjust the term of the patent to compensate for such delays.

4. For purposes of this Article, an unreasonable delay at least shall include a delay in the issuance of a patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later. A Party may exclude, from the determination of such delays, periods of time that do not occur during the processing⁴² of, or the examination of, the patent application by the granting authority; periods of time that are not directly attributable⁴³ to the granting authority; as well as periods of time that are attributable to the patent applicant⁴⁴.

{Subsection B: Data Protection for Agricultural Chemical Products}

Article QQ.E.13: {Agricultural Chemical Products}

1. If a Party requires, as a condition for granting marketing approval⁴⁵ for a new agricultural chemical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product⁴⁶, the Party shall not permit third persons, without the consent of the person who previously submitted such information, to market the same or a similar⁴⁷ product on the basis of that information or the marketing approval granted to the person who submitted such test or other data for at least ten years⁴⁸ from the date of marketing approval of the new agricultural chemical product in the territory of the Party.

⁴² For purposes of this paragraph, a Party may interpret processing to mean initial administrative processing and administrative processing at the time of grant.

⁴³ A Party may treat "delays that are not directly attributable to granting authority" as delays that are outside the direction or control of the granting authority.

⁴⁴ With regard to copyright and related rights piracy provided for by QQ.H.7.1 (Commercial Scale), a Party may limit application of subparagraph (h) to the cases where there is an impact on the right holder's ability to exploit the work in the market. The date two years after the signing of this Agreement, whichever is later for that Party.

⁴⁵ For purposes of this Chapter, the term "marketing approval" is synonymous with "sanitary approval" under a Party's law.

⁴⁶ Each Party confirms that the obligations of this Article apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product, or (c) both.

⁴⁷ For greater certainty, for purposes of this Section, an agricultural chemical product is "similar" to a previously approved agricultural chemical product if the marketing approval, or, in the alternative, the applicant's request for such approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.

⁴⁸ For greater certainty, a Party may limit the period of protection under Article QQ.E.13 to 10 years.

Without Prejudice

2. If a Party permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of evidence of a prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of the person who previously submitted undisclosed test or other data concerning the safety and efficacy of the product in support of that prior marketing approval, to market the same or a similar product based on that undisclosed test or other data, or other evidence of the prior marketing approval in the other territory, for at least ten years from the date of marketing approval of the new agricultural chemical product in the territory of the Party.
3. For the purposes of this Article, a new agricultural chemical product is one that contains⁴⁹ a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

{Subsection C: Measures Relating to Pharmaceutical / Regulated Products}

Article QQ.E.14: {Patent Term Adjustment for Unreasonable Curtailment}

1. Each Party shall make best efforts to process applications for marketing approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.
2. With respect to a pharmaceutical product⁵⁰ that is subject to a patent, each Party shall make available an adjustment⁵¹ of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process⁵².
3. For greater certainty, in implementing the obligations of this Article, each Party may provide for conditions and limitations provided that the Party continues to give effect to this Article.
4. With the objective of avoiding unreasonable curtailment of the effective patent term, a Party may adopt or maintain procedures that expedite the examination of marketing approval applications.

⁴⁹ For the purposes of this Article, a Party may treat “contain” as meaning utilize. For greater certainty, for the purposes of this Article a Party may treat “utilize” as requiring the new chemical entity to be primarily responsible for the product’s intended effect.

⁵⁰ A Party may comply with the obligations of this paragraph with respect to a pharmaceutical product or, alternatively, with respect to a pharmaceutical substance.

⁵¹ For greater certainty, a Party may alternatively make available a period of additional *sui generis* protection to compensate for unreasonable curtailment of the effective patent term as a result of the marketing approval process. The *sui generis* protection shall confer the rights conferred by the patent, subject to any conditions and limitations pursuant to Paragraph 3.

⁵² Notwithstanding Article QQ.A.10*bis*, this Article shall apply to all applications for marketing approval filed after the date of entry into force of this Article for that Party.

Without Prejudice

Article QQ.E.15: {Regulatory Review Exception}

Without prejudice to the scope of, and consistent with, QQ.E.4, each Party shall adopt or maintain a regulatory review exception⁵³ for pharmaceutical products.

Article QQ.E.16: {Pharmaceutical Data Protection/Protection of Undisclosed Test or Other Data}

1. (a) If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product⁵⁴, the Party shall not permit third persons, without the consent of the person who previously submitted such information, to market the same or a similar⁵⁵ product on the basis of:
 - (i) that information; or
 - (ii) the marketing approval granted to the person who submitted such informationfor at least five years⁵⁶ from the date of marketing approval of the new pharmaceutical product in the territory of the Party.
- (b) If a Party permits, as a condition of granting marketing approval for a new pharmaceutical product, the submission of evidence of prior marketing approval of the product in another territory, the Party shall not permit third persons, without the consent of a person who previously submitted such information concerning the safety and efficacy of the product, to market a same or a similar product based on evidence relating to prior marketing approval in the other territory for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of the Party.

⁵³ For greater certainty, consistent with QQ.E.4, nothing prevents a Party from providing that regulatory review exceptions apply for purposes of regulatory reviews in that Party, in another country, or both.

⁵⁴ Each Party confirms that the obligations of Article QQ.E.16, and QQ.E.20 apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product, or (c) both.

⁵⁵ For greater certainty, for purposes of this Section, a pharmaceutical product is “similar” to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant’s request for such approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

⁵⁶ For greater certainty, a Party may limit the period of protection under Article QQ.E.16.1 to 5 years, and the period of protection under Article QQ.E.20.1(a) to 8 years.

Without Prejudice

2. Each Party shall⁵⁷:
 - (a) apply Article QQ.E.16.1 *mutatis mutandis* for a period of at least three years with respect to new clinical information submitted as required in support of a marketing approval of a previously approved pharmaceutical product covering a new indication, new formulation or new method of administration; or alternatively,
 - (b) apply Article QQ.E.16.1 *mutatis mutandis* for a period of at least five years to new pharmaceutical products that contain a chemical entity that has not been previously approved in the Party⁵⁸.
3. Notwithstanding paragraphs 1 and 2 above and Article QQ.E.20, a Party may take measures to protect public health in accordance with:
 - (a) the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (the “Declaration”);
 - (b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration and in force between the Parties; and
 - (c) any amendment of the TRIPS Agreement to implement the Declaration that enters into force with respect to the Parties.

Article QQ.E.17: {}

1. If a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety and efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory, that Party shall provide⁵⁹:
 - (a) a system to provide notice to a patent holder⁶⁰ or to allow for a patent holder to be notified prior to the marketing of such a pharmaceutical product, that such other person is seeking to market that product during the term of an

⁵⁷ A Party that provides a period of at least 8 years of protection pursuant to QQ.E.16.1 is not required to apply Article QQ.E.16.2.

⁵⁸ For the purposes of this QQ.E.16.2(b), a Party may choose to protect only the undisclosed test or other data concerning the safety and efficacy relating to the chemical entity that has not been previously approved.

⁵⁹ Drafter’s Note: The Parties understand that QQ.A.5 applies to the provisions of this Chapter, including this paragraph. Accordingly, a Party may implement this Article by applying it to any pharmaceutical product that is subject to a patent.

⁶⁰ For greater certainty, for purposes of this Article, a Party may provide that a “patent holder” includes a patent licensee or the authorized holder of marketing approval.

Without Prejudice

applicable patent claiming the approved product or its approved method of use;

- (b) adequate time and opportunity for such a patent holder to seek, prior to the marketing⁶¹ of an allegedly infringing product, available remedies in subparagraph (c); and
- (c) procedures, such as judicial or administrative proceedings, and expeditious remedies, such as preliminary injunctions or equivalent effective provisional measures, for the timely resolution of disputes concerning the validity or infringement of an applicable patent claiming an approved pharmaceutical product or its approved method of use.

2. As an alternative to paragraph 1, a Party shall instead adopt or maintain an extra-judicial system which precludes, based upon patent-related information submitted to the marketing approval authority by a patent holder or the applicant for a marketing approval, or based on direct coordination between the marketing approval authority and the patent office, the issuance of marketing approval to any third party seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.

Article QQ.E.20: {Biologics}

- 1. With regard to protecting new biologics, a Party shall either:
 - (a) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic^{62,63}, provide effective market protection through the implementation of Article QQ.E.16.1 and Article QQ.E.16.3 *mutatis mutandis* for a period of at least 8 years from the date of first marketing approval of that product in that Party; or alternatively
 - (b) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic, provide effective market protection:

⁶¹ For the purposes of Article QQ.E.17.1(b), a Party may treat “marketing” as commencing at the time of listing for purposes of the reimbursement of pharmaceutical products pursuant to a national healthcare program operated by a Party and inscribed in the Annex attached to the Chapter XX TPP Transparency Annex on Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices.

⁶² Nothing requires a Party to extend the protection of this paragraph to:

- (a) any second or subsequent marketing approval of such a pharmaceutical product; or
- (b) a pharmaceutical product that is or contains a previously approved biologic.

⁶³ Each Party may provide that an applicant may request approval of a pharmaceutical product that is a biologic under the procedures set forth in Article QQ.E.16.1(a)-(b) within 5 years of entry into force of this Agreement, provided that other pharmaceutical products in the same class of products have been approved by the Party under the procedures set forth in Article QQ.E.16.1(a)-(b) before entry into force of this Agreement.

Without Prejudice

- (i) through the implementation of Articles QQ.E.16.1 and QQ.E.16.3 *mutatis mutandis* for a period of at least 5 years from the date of first marketing approval of that product in that Party;
- (ii) through other measures; and
- (iii) recognizing that market circumstances also contribute to effective market protection

to deliver a comparable outcome in the market.

2. For the purposes of this Section, each Party shall apply this provision to, at a minimum, a product that is, or alternatively, contains, a protein produced using biotechnology processes⁶⁴, for use in human beings for the prevention, treatment, or cure of a disease or condition.

3. Recognizing that international and domestic regulation of new pharmaceutical products that are or contain a biologic is in a formative stage and that market circumstances may evolve over time, the Parties shall consult after 10 years, or as otherwise decided by the TPP Commission, to review the period of exclusivity provided in paragraph 1 and the scope of application provided in paragraph 2, with a view to providing effective incentives for the development of new pharmaceutical products that are or contain a biologic, as well as with a view to facilitating the timely availability of follow-on biosimilars, and to ensuring that the scope of application remains consistent with international developments regarding approval of additional categories of new pharmaceutical products that are or contain a biologic.

PLACEMENT TBD: *To implement {and comply with} QQ.E.20.1(a) and (b), only the following TPP Parties have determined that they require change to their law, and thus require transition periods:*

- (i) For (**), a transition of (x) years*
- (ii) For (***), a transition of (y) years.*

Article QQ.E.21: {Definition of New Pharmaceutical Product}⁶⁵

For the purposes of Article QQ.E.16.1, a new pharmaceutical product means a pharmaceutical product that does not contain⁶⁶ a chemical entity that has been previously approved in the Party.

⁶⁴ Drafters' note: The Parties understand that Article QQ.A.5 applies to the provisions of this Chapter, including the definition of "biotechnology process" in this paragraph. Accordingly, the Parties understand that each Party may determine the meaning of biotechnology processes in its legal system and practice.

⁶⁵ Negotiators' Note to legal scrub: please determine proper placement of this definition.

⁶⁶ For the purposes of this Article, a Party may treat "contain" as meaning utilize.

Without Prejudice

Article QQ.E.22: {}

Subject to Article QQ.E.16.3 (protection of public health), when a product is subject to a system of marketing approval in the territory of a Party pursuant to Articles QQ.E.16, QQ.E.20, or QQ.E.13 (agricultural chemical products) and is also covered by a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to Articles QQ.E.16, QQ.E.20, or QQ.E.13 (agricultural chemical products) in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in Articles QQ.E.16, QQ.E.20, or QQ.E.13 (agricultural chemical products).

Section F: Industrial Designs

Article QQ.F.1: {Industrial Designs}

1. Each Party shall ensure adequate and effective protection of industrial designs and also confirms that protection for industrial designs is available for designs:
 - (a) embodied in a part of an article, or alternatively;
 - (b) having a particular regard, where appropriate, to a part of an article in the context of the article as a whole.
2. This Article is subject to Articles 25 and 26 of the TRIPS Agreement.

Article QQ.F.2: {}

The Parties recognize the importance of improving quality and efficiency in their industrial design registration systems, as well as facilitating the process of cross border acquisition of rights thereof including giving due consideration to ratifying or acceding to Hague Agreement Concerning the International Registration of Industrial Designs (1999).

Without Prejudice

{Section G: Copyright and Related Rights}

Article QQ.G.1: {Right of Reproduction}

Each Party shall provide⁶⁷ that authors, performers, and producers of phonograms⁶⁸ have the right⁶⁹ to authorize or prohibit all reproductions of their works, performances⁷⁰, and phonograms in any manner or form, including in electronic form.

Article QQ.G.2: {Right of Communication to the Public}

Without prejudice to Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis*(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the 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 these works from a place and at a time individually chosen by them⁷¹.

Article QQ.G.4: {Right of Distribution}

Each Party shall provide to authors, performers, and producers of phonograms the right to authorize or prohibit the making available to the public of the original and copies⁷² of their works, performances, and phonograms through sale or other transfer of ownership.

Article QQ.G.5: {No Hierarchy}

Each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall provide that in cases where authorization is needed from both the author of a work

⁶⁷ The Parties reaffirm that it is a matter for each Party's law to prescribe that works in general or any specified categories of works, performances and phonograms shall not be protected by copyright or related rights unless they have been fixed in some material form.

⁶⁸ References to "authors, performers, and producers of phonograms" refer also to any successors in interest.

⁶⁹ With respect to copyrights and related rights in this Chapter, the "right to authorize or prohibit" and the "right to authorize" refer to exclusive rights.

⁷⁰ With respect to this Chapter, a "performance" means a performance fixed in a phonogram unless otherwise specified.

⁷¹ It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. It is further understood that nothing in this Article precludes a Party from applying Article 11*bis*(2) of the Berne Convention.

⁷² The expressions "copies" and "original and copies" subject to the right of distribution in this paragraph refer exclusively to fixed copies that can be put into circulation as tangible objects.

Without Prejudice

embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

Article QQ.G.14: {Related Rights}

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms to the performers and producers of phonograms who are nationals⁷³ of another Party and to performances or phonograms first published or first fixed in the territory of another Party⁷⁴. A performance or phonogram shall be considered first published in the territory of a Party in which it is published within 30 days of its original publication⁷⁵.

2. Each Party shall provide to performers the right to authorize or prohibit:

- (a) broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and
- (b) fixation of their unfixed performances.

3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means⁷⁶⁷⁷, and the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

- (b) Notwithstanding subparagraph (a) and Article (QQ.G.16)(*limitations and exceptions*), the application of this right to analog transmissions and non-

⁷³ For the purposes of determining points of attachment under this Article, with respect to performers, a Party may treat “nationals” as those who would meet the criteria for eligibility under the WPPT Article 3.

⁷⁴ For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, consistent with QQ.A.9, it is understood that Parties shall accord to performances and phonograms first published or first fixed in the territory of another Party, treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.

⁷⁵ For purposes of this Article, fixation means the finalization of the master tape or its equivalent.

⁷⁶ With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15(1) and 15(4) of the WPPT and may also apply Article 15(2) of the WPPT, as long as it is done in a manner consistent with that Party’s obligations under Article QQ.A.9 (National Treatment).

⁷⁷ For greater certainty, the obligation under Article QQ.G.14.3 does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

Without Prejudice

interactive, free over-the-air broadcasts, and exceptions or limitations to this right for such activities, shall be a matter of each Party's law⁷⁸.

Article QQ.G.15: {Definitions}

For purposes of this (Article QQ.G.1 and Article QQ.G.3–18 - *articles to be verified on scrub*), the following definitions apply with respect to performers and producers of phonograms:

- (a) “broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- (b) “communication to the public” of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;
- (c) “fixation” means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;
- (d) “performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;
- (e) “phonogram” means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;
- (f) “producer of a phonogram” means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and
- (g) “publication of a performance or a phonogram” means the offering of copies of the performance or the phonogram to the public, with the consent of the

⁷⁸ For the purposes of subparagraph (b), it is understood that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that such retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in such retransmissions complies with the relevant rules, orders or regulations of that authority; and such retransmissions do not include those delivered and accessed over the Internet. For greater certainty, this footnote does not limit a Party's ability to avail itself of subparagraph (b).

Without Prejudice

right holder, and provided that copies are offered to the public in reasonable quantity.

Article QQ.G.6: {Term of Protection for Copyright and Related Rights}

Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated⁷⁹:

- (a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death⁸⁰; and
- (b) on a basis other than the life of a natural person, the term shall be:
 - (i) not less than 70 years from the end of the calendar year of the first authorized publication⁸¹ of the work, performance, or phonogram; or
 - (ii) failing such authorized publication within 25 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram⁸².

Article QQ.G.8: {Application of Berne Article 18 and Article 14.6 of the TRIPS Agreement}

Each Party shall apply Article 18 of the Berne Convention for the Protection of Literary and Artistic Works (1971) (Berne Convention) and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by Section G.

Article QQ.G.16: {Limitations and Exceptions}

- (a) With respect to Section G, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal

⁷⁹ For greater certainty, in implementing QQ.G.6, nothing prevents a Party from promoting certainty for the legitimate use and exploitation of works, performances and phonograms during their terms of protection, consistent with QQ.G.16 and that Party's international obligations.

⁸⁰ The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 70 years, nothing in this Article or Article QQ.A.9 shall preclude that Party from applying Article 7.8 of the Berne Convention with respect to the term in excess of the term provided in QQ.G.6(a) of protection for works of another Party.

⁸¹ For greater certainty, for the purposes of Article QQ.G.6 (b)(i) and (ii), where a Party's law provides for the calculation of term from fixation rather than from the first authorized publication, that Party may continue to calculate term from fixation.

⁸² For greater certainty, a Party may calculate a term of protection for an anonymous or pseudonymous work or a work of joint authorship in accordance with Article 7(3) or *7bis* of the Berne Convention, provided that the Party implements the corresponding numerical term of protection required under Article QQ.G.6.

Without Prejudice

exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

- (b) Article QQ.G.16(a) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty.

Article QQ.G.17: {Appropriate Balance in Copyright and Related Rights Systems}

Each Party shall endeavor to achieve an appropriate balance in its copyright and related rights system, *inter alia* by means of limitations or exceptions that are consistent with Article QQ.G.16, including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired, or otherwise print disabled⁸³,
⁸⁴.

Article QQ.G.9: {Contractual Transfers}

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right⁸⁵ in a work, performance, or phonogram:

- (a) may freely and separately transfer that right by contract; and
- (b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right⁸⁶.

⁸³ As recognized by the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (June 27, 2013). The Parties recognize that some Parties facilitate the availability of works in accessible formats for beneficiaries beyond the requirements of the Marrakesh Treaty.

⁸⁴ For purposes of greater clarity, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article QQ.G.16.3.

⁸⁵ For greater certainty, this provision does not affect the exercise of moral rights.

⁸⁶ Nothing in this Article affects a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original rights holders, taking into account the legitimate interests of the transferees.

Without Prejudice

Article QQ.G.10: {Technological Protection Measures}⁸⁷

- (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:
 - (i) knowingly, or having reasonable grounds to know⁸⁸, circumvents without authority any effective technological measure that controls access to a protected work⁸⁹, performance, or phonogram⁹⁰; or
 - (ii) manufactures, imports, distributes⁹¹, offers for sale or rental to the public, or otherwise provides devices, products, or components, or offers to the public or provides services, that:
 - (A) are promoted, advertised, or otherwise marketed by that person⁹² for the purpose of circumventing any effective technological measure;
 - (B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure⁹³; or
 - (C) are primarily designed, produced, or performed for the purpose of circumventing any effective technological measure,

⁸⁷ Nothing in this Agreement shall require any Party to restrict the importation or domestic sale of a device that does not render effective a technological measure the sole purpose of which is to control market segmentation for legitimate physical copies of cinematographic film, and is not otherwise a violation of law.

⁸⁸ A Party may provide that reasonable grounds to know may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.

⁸⁹ For greater certainty, in this Chapter, cinematographic works and computer programs are included in the term “work.”

⁹⁰ For greater certainty, no Party is required to impose civil or criminal liability under subparagraph (a)(i) for a person who circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, performance or phonogram, but that does not control access to such work, performance or phonogram.

⁹¹ A Party may provide that the obligations described in paragraph (ii) with respect to manufacturing, importation, and distribution apply only where such activities are undertaken for sale or rental, or where such activities prejudice the interests of the right holder of the copyright or related right.

⁹² It is understood that this provision still applies where the person promotes, advertises, or markets through the services of a third party.

⁹³ A Party may comply with this paragraph if the conduct referred to in (ii) does not have a commercially significant purpose or use other than to circumvent any effective technological measure.

Without Prejudice

shall be liable and subject to the remedies set out in Article QQ.H.4.17 (Civil Judicial Proceedings relating to TPMs and RMIs).

Each Party shall provide for criminal procedures and penalties to be applied where any person is found to have engaged wilfully⁹⁴ and for the purposes of commercial advantage or financial gain⁹⁵ in any of the above activities⁹⁶.

Each Party may provide that such criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution, or public non-commercial broadcasting entity. A Party may also provide that the remedies set out in Article QQ.H.4.17 (Civil Judicial Proceedings relating to TPMs and RMIs) do not apply to those same entities provided that the above activities are carried out in good faith without knowledge that the conduct is prohibited.

- (b) In implementing subparagraph (a), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a).
- (c) Each Party shall provide that a violation of a measure implementing this paragraph is independent of any infringement that might occur under the Party's law on copyright and related rights⁹⁷.
- (d) (i) Each Party may provide certain exceptions and limitations to the measures implementing subparagraphs (a)(i); and
(ii) in order to enable non-infringing uses where there is an actual or likely adverse impact of those measures on those non-infringing uses, as determined through a legislative, regulatory, or administrative process in accordance with the Party's law, giving due consideration to evidence when presented in that process, including with respect to whether appropriate and effective measures have been taken by rights holders to enable the

⁹⁴ For greater certainty, for purposes of Articles QQ.G.10 and QQ.G.13, it is understood that willfulness contains a knowledge element.

⁹⁵ For greater certainty, for purposes of Articles QQ.G.10, QQ.G.13 and QQ.H.7.1, it is understood that a Party may treat "financial gain" as "commercial purposes in its law."

⁹⁶ For purposes of greater certainty, no Party is required to impose liability under Articles (QQ.G.10 (TPMs)) and (QQ.G.13 (RMIs)) for actions taken by that Party or a third party acting with the authorization or consent of that Party.

⁹⁷ For greater certainty, a Party is not required to treat the criminal act of circumvention set forth in subparagraph (a)(i) as an independent violation, where the Party criminally penalizes such acts through other means.

Without Prejudice

beneficiaries to enjoy the limitations and exceptions to copyright and related rights under that Party's law⁹⁸.

- (e) Any exceptions and limitations to the measures implementing subparagraph (a)(ii) shall be permitted solely to enable the legitimate use of an exception or limitation permissible under Article QQ.G.10 (TPMs) by its intended beneficiaries⁹⁹ and shall not authorize the making available of devices, products, components, or services beyond such intended beneficiaries¹⁰⁰.
- (f) By providing exceptions and limitations under paragraph d(i) and (ii) a Party shall not undermine the adequacy of that Party's legal system for the protection of effective technological measures, or the effectiveness of legal remedies against the circumvention of such measures, that authors, performers, or producers of phonograms use in connection with the exercise of their rights, or that restrict unauthorized acts in respect of their works, performances or phonograms, as provided for in this Chapter.
- (g) "Effective technological measure" means any effective¹⁰¹ technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, or phonogram, or protects copyright or related rights related to a work, performance or phonogram.

Article QQ.G.13: {Rights Management Information}

In order to provide adequate and effective legal remedies to protect rights management information¹⁰²:

- (a) each Party shall provide that any person who without authority, and knowing, or having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of the copyright or related right of authors, performers, or producers of phonograms:

⁹⁸ For greater certainty, nothing in this provision requires Parties to make a new determination via the legislative, regulatory, or administrative process with respect to exceptions and limitations to the legal protection of effective technological measures: i) previously established pursuant to trade agreements in force between Parties; or ii) previously implemented by the Parties, provided that such exceptions and limitations are otherwise consistent with Article QQ.G.10(d).

⁹⁹ For greater certainty, a Party may provide an exception to a(ii) without providing a corresponding exception to a(i), provided that the exception to a(ii) is limited to enabling a legitimate use that is within the scope of exceptions or limitations to a(i) as provided under d(i).

¹⁰⁰ For the purposes of interpreting subparagraph d(ii) only, subparagraph a(i) should be read to apply to all effective technological measures as defined in paragraph (e), *mutatis mutandis*.

¹⁰¹ For greater certainty, it is understood that a technological measure that can, in a usual case, be circumvented accidentally is not an "effective" technological measure.

¹⁰² Each Party may comply with the obligations in this Article by providing legal protection only to electronic rights management information.

Without Prejudice

- (i) knowingly¹⁰³ removes or alters any rights management information;
- (ii) knowingly distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority¹⁰⁴; or
- (iii) knowingly distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies set out in (Article QQ.H.4(17) (TPMs/RMI civil remedies).)

Each Party shall provide for criminal procedures and penalties to be applied where any person is found to have engaged willfully and for purposes of commercial advantage or financial gain in any of the above activities.

Each Party may provide that such criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution, or public non-commercial broadcasting entity¹⁰⁵.

- (b) For greater certainty, nothing prevents a Party from excluding lawfully authorized activities carried out for the purpose of law enforcement, essential security interests, or other related governmental purposes, such as performance of statutory functions, from measures implementing subparagraph (a).
- (c) “Rights management information” means:
 - (i) information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;
 - (ii) information about the terms and conditions of the use of the work, performance, or phonogram; or
 - (iii) any numbers or codes that represent such information,

¹⁰³ Each Party may extend the protections afforded by this paragraph to circumstances in which a person engages without knowledge in the acts in subparagraph (i), (ii), and (iii), and to other related rights holders.

¹⁰⁴ A Party may comply with its obligations under this subparagraph by providing for civil judicial proceedings concerning the enforcement of moral rights under the Party’s copyright law. A Party may also meet its obligation under paragraph (a)(ii), where it provides effective protection for original compilations, provided that the acts described in paragraph (a)(ii) are treated as infringements of copyright in such original compilations.

¹⁰⁵ For greater certainty, a Party may treat a broadcasting entity established without a profit-making purpose under its law as a public non-commercial broadcasting entity.

Without Prejudice

when any of these items of information is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance or phonogram, to the public.

- (d) For greater certainty, nothing in this Article shall obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

Article QQ.G.18: {Collective Management}

The Parties recognize the important role of collective management societies for copyright and related rights in collecting and distributing royalties¹⁰⁶ based on practices that are fair, efficient, transparent and accountable, and which may include appropriate record keeping and reporting mechanisms.

{Section H: Enforcement}

Article QQ.H.1: {General Enforcement}

1. Each Party shall ensure that enforcement procedures as specified in this section, are available under its law¹⁰⁷ so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to future infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse¹⁰⁸.
2. Each Party confirms that the enforcement procedures set forth in Articles {QQ.H.4 and QQ.H.5 (civil and provisional measures) and QQ.H.7 (criminal measures)} shall be available to the same extent with respect to acts of trademark, copyright or related rights infringement in the digital environment.
3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights shall be fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
4. This Section does not create any obligation:

¹⁰⁶ For greater certainty, royalties may include equitable remuneration.

¹⁰⁷ For greater certainty, “law” is not limited to legislation.

¹⁰⁸ For greater certainty, each Party confirms that it makes such remedies available, subject to TRIPS Article 44 and the provisions of this Agreement, with respect to enterprises, regardless of whether the enterprises are private or state-owned.

Without Prejudice

- (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce their law in general; or
- (b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.

5. In implementing the provisions of this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the intellectual property infringement, and the applicable remedies and penalties, as well as the interests of third parties.

Article QQ.H.2: {Presumptions}

1. In civil, criminal, and if applicable, administrative proceedings involving copyright or related rights, each Party shall provide:

- (a) for a presumption¹⁰⁹ that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner¹¹⁰ as the author, performer, producer of the work, performance, or phonogram, or as applicable, the publisher is the designated right holder in such work, performance, or phonogram; and
- (b) for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter.

2. In connection with the commencement of a civil, administrative or criminal enforcement proceeding involving a registered trademark that has been substantively examined by the competent authority, each Party shall provide that such a trademark be considered *prima facie* valid.

3. In connection with the commencement of a civil or administrative enforcement proceeding involving a patent that has been substantively examined and granted¹¹¹ by the competent authority, each Party shall provide that each claim in the patent be considered

¹⁰⁹ For greater certainty, a Party may implement this Article on the basis of sworn statements or documents having evidentiary value, such as statutory declarations. A Party may also provide that such presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.

¹¹⁰ Each Party may establish the means by which it shall determine what constitutes the “usual manner” for a particular physical support.

¹¹¹ For greater certainty, nothing prevents a Party from making available third party procedures in connection with its fulfilment of Paragraphs 2 and 3.

Without Prejudice

prima facie to satisfy the applicable criteria of patentability in the territory of the Party^{112,113}.

Article QQ.H.3: {Enforcement Practices With Respect to Intellectual Property Rights}

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights shall preferably be in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall also provide that such decisions and rulings shall be published¹¹⁴ or, where publication is not practicable, otherwise made available to the public, in a national language in such a manner as to enable interested persons and Parties to become acquainted with them.
2. Each Party recognizes the importance of collecting and analyzing statistical data and other relevant information concerning intellectual property rights infringements as well as collecting information on best practices to prevent and combat infringements.
3. Each Party shall publish or otherwise make available to the public information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, such as statistical information that the Party may collect for such purposes.

Article QQ.H.4: {Civil and Administrative Procedures and Remedies}

1. Each Party shall make available to rights holders¹¹⁵ civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter.

¹¹² For greater certainty, where a Party provides its administrative authorities with the exclusive authority to determine the validity of a registered trademark or patent, nothing in paragraphs 2 and 3 shall prevent that Party's competent authority from suspending the enforcement procedures until the validity of the registered trademark or patent is determined by the administrative authority. In such validity procedures, the party challenging the validity of the registered trademark or patent shall be required to prove that the registered trademark or patent is not valid. Notwithstanding the foregoing sentence, a Party may require the trademark holder to provide evidence of first use.

¹¹³ A Party may provide that this provision applies only to those patents that have been applied for, examined and granted after the entry into force of this Agreement.

¹¹⁴ A Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

¹¹⁵ For the purposes of this Article, the term "right holder" shall include those authorized licensees, federations and associations that have the legal standing and authority to assert such rights. The term "authorized licensee" shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

Without Prejudice

2. Each Party shall provide¹¹⁶ that in civil judicial proceedings its judicial authorities have the authority at least to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.
3. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least as described in paragraph 2, to pay the right holder the infringer's profits that are attributable to the infringement¹¹⁷.
4. In determining the amount of damages under paragraph 2, its judicial authorities shall have the authority to consider, *inter alia*, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.
5. Each Party shall provide that its judicial authorities have the authority to order injunctive relief that conforms to the provisions of Article 44 of the TRIPS Agreement, *inter alia*, to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing such relief from entering into the channels of commerce.
6. Each Party shall ensure that its judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures with regard to intellectual property rights including trademarks, geographical indications, patents, copyright and related rights, and industrial designs, to provide the party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.
7. In civil judicial proceedings, with respect to infringement of copyright or related rights protecting works, phonograms, and performances, each Party shall establish or maintain a system that provides for one or more of the following:
 - (a) pre-established damages, which shall be available upon the election of the right holder; or
 - (b) additional damages¹¹⁸.
8. In civil judicial proceedings, with respect to trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:

¹¹⁶ A Party may also provide that the right holder may not be entitled to any of the remedies set out in 2, 3 and 8 in the case of a finding of non-use of a trademark. It is understood that there is no obligation for a Party to provide for the possibility of any of the remedies in 2, 3, 7 and 8 to be ordered in parallel.

¹¹⁷ A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 2.

¹¹⁸ For greater certainty, additional damages may include exemplary or punitive damages.

Without Prejudice

- (a) pre-established damages, which shall be available upon the election of the right holder; or
 - (b) additional damages¹¹⁹.
9. Pre-established damages under paragraphs (7) and (8) shall be set out in an amount that would be sufficient to compensate the right holder for the harm caused by the infringement, and with a view to deterring future infringements.
10. In awarding additional damages under paragraphs (7) and (8), judicial authorities shall have the authority to award such additional damages as they consider appropriate, having regard to all relevant matters, including the nature of the infringing conduct and the need to deter similar infringements in the future.
11. Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, patents, and trademarks, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's law.
12. Each Party shall provide that in civil judicial proceedings:
- (a) At least with respect to pirated copyright goods and counterfeit trademark goods, each Party shall provide that, in civil judicial proceedings, at the right holder's request, its judicial authorities have the authority to order that such infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort.
 - (b) Each Party shall further provide that its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of such infringing goods, be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.
 - (c) In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.
13. 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, in the alternative, the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information

¹¹⁹ For greater certainty, additional damages may include exemplary or punitive damages.

Without Prejudice

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 alleged to be involved in the production and distribution of such goods or services and of their channels of distribution.

14. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of intellectual property rights, its judicial or other authorities have the authority to impose sanctions on a party, counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.

15. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those set out in this Article (civil and administrative proceedings).

16. In the event that a Party's judicial or other authorities appoint technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation bear the costs of such experts, that Party should seek to ensure that such costs are reasonable and related appropriately, *inter alia*, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

17. In civil judicial proceedings concerning the acts described in Article QQ.G.10 (TPMs) and Article QQ.G.12 (RMI), each Party shall provide that its judicial authorities shall, at least, have the authority to¹²⁰:

- (a) impose provisional measures, including seizure or other taking into custody of devices and products suspected of being involved in the prohibited activity;
- (b) order the type of damages available for copyright infringement, as provided under its regime in accordance with Article QQ.H.4¹²¹;
- (c) order court costs, fees, or expenses as provided for under Article QQ.H.4.11; and
- (d) order the destruction of devices and products found to be involved in the prohibited activity.

A Party may provide that damages shall not be available against a nonprofit library, archives, educational institution, museum, or public noncommercial broadcasting entity

¹²⁰ For greater certainty, a Party may, but is not required to, put in place separate remedies in respect of Article QQ.G.10 (TPMs) and Article QQ.G.12 (RMI), if such remedies are available under its copyright law.

¹²¹ Where a Party's copyright regime provides for both pre-established damages and additional damages, it may comply with the requirements of this subparagraph by providing for only one of these forms of damages.

Without Prejudice

that sustains the burden of proving that such entity was not aware or had no reason to believe that its acts constituted a prohibited activity.

Article QQ.H.5: {Provisional Measures}

1. Each Party's authorities shall act on requests for relief in respect of any intellectual property right *inaudita altera parte* expeditiously in accordance with the Party's judicial rules.
2. Each Party shall provide that its judicial authorities have the authority to require the applicant, with respect to provisional measures in respect of any intellectual property right, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to such procedures.
3. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure or other taking into custody of suspected infringing goods, materials and implements relevant to the infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

Article QQ.H.6: {Special Requirements related to Border Measures}¹²²

1. Each Party shall provide for applications to suspend the release of, or to detain, any suspect counterfeit or confusingly similar trademark, or pirated copyright goods that are imported¹²³ into the territory of the Party.
4. Each Party shall provide that any right holder initiating procedures for its competent authorities¹²⁴ to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods¹²⁵ into free circulation is required to provide adequate

¹²² Drafter's note: The Parties understand that there shall be no obligation to apply the procedures set forth in this Article to goods put on the market in another country by or with the consent of the right holder.

¹²³ Drafter's note: The Parties understand that a Party may treat "in transit" as distinct from "imported."

¹²⁴ For the purposes of this Article QQ.H.6 (Border Measures), unless otherwise specified, competent authorities may include the appropriate judicial, administrative, or law enforcement authorities under a Party's law.

¹²⁵ For purposes of Article QQ.H.6:

(a) counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the Party providing the procedures under this section; and

Without Prejudice

evidence to satisfy the competent authorities that under the law of the Party providing the procedures there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide such information shall not unreasonably deter recourse to these procedures.

5. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures. A Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

6. Without prejudice to a Party's laws pertaining to privacy or the confidentiality of information, where its competent authorities have detained or suspended the release of goods that are suspected of being counterfeit trademark goods or pirated copyright goods, a Party may provide that its competent authorities have the authority to inform the right holder without undue delay of the names and addresses of the consignor, exporter, consignee, or importer, a description of the goods, quantity of the goods, and, if known, the country of origin of the goods¹²⁶. Where a Party does not provide such authority to its competent authorities when suspect goods are detained or suspended from release, it shall provide at least in cases of imported goods, its competent authorities with the authority to provide the foregoing information to the right holder normally within 30 days¹²⁷ of the seizure or determination that the goods are counterfeit trademark or pirated copyright goods.

7. Each Party shall provide that its competent authorities may initiate border measures *ex officio*¹²⁸ with respect to goods under customs control¹²⁹ that are:

(a) imported;

(b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this section.

¹²⁶ For greater certainty, a Party may establish reasonable procedures to receive or access such information.

¹²⁷ For purposes of this Article, "days" shall mean "business days".

¹²⁸ For greater certainty, the parties understand that *ex officio* action does not require a formal complaint from a private party or right holder.

¹²⁹ For purposes of this Article, a Party may treat "goods under customs control" as meaning goods that are subject to a Party's customs procedures.

Without Prejudice

- (b) destined for export¹³⁰; or
- (c) in-transit^{131,132},

and that are suspected of being counterfeit trademark goods, or pirated copyright goods.

8. Each Party shall adopt or maintain a procedure by which its competent authorities may determine, within a reasonable period of time after the initiation of the procedures described under Article QQ.H.6.(1), QQ.H.6.6(a) and QQ.H.6.6(b) and if applicable QQ.H.6.6(c), whether the suspect goods infringe an intellectual property right¹³³. Where a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods, following a determination that the goods are infringing.

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

10. Where a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee, or destruction fee, such fee shall not be set at an amount that unreasonably deters recourse to these procedures.

11. Each Party shall include in the application of this Article goods of a commercial nature sent in small consignments. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travelers' personal luggage¹³⁴.

Article QQ.H.7: {Criminal Procedures and Penalties}

¹³⁰ For purposes of this Article, a party may treat goods "destined for export" as meaning exported.

¹³¹ Subparagraph (c) applies to suspect goods which are in-transit from one customs office to another customs office in the Party's territory from which the goods will be exported.

¹³² As an alternative to QQ.H.6.6(c), a Party shall instead endeavour to provide, where appropriate and with a view to eliminating international trade in counterfeit trade mark or pirated copyright goods, available information to another Party in respect of goods that it has examined without a local consignee which are transhipped through its territory and destined for the territory of the other Party, to inform that other Party's efforts to identify suspect goods upon arrival in its territory.

¹³³ A Party may comply with the obligation in this Article with respect to a determination that suspect goods under QQ.H.6.6 infringe an intellectual property right through a determination that the suspect goods bear a false trade description.

¹³⁴ For greater certainty, a Party may also exclude from the application of this Article small quantities of goods of a non-commercial nature sent in small consignments.

Without Prejudice

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In respect of willful copyright or related rights piracy, “on a commercial scale” includes at least:

- (a) acts carried out for commercial advantage or financial gain; and
- (b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights owner in relation to the marketplace^{135,136}.

2. Each Party shall treat willful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties¹³⁷.

3. Each Party shall provide for criminal procedures and penalties to be applied in cases of willful importation¹³⁸ and domestic use, in the course of trade and on a commercial scale, of labels or packaging¹³⁹:

- (a) to which a mark has been applied without authorization which is identical to, or cannot be distinguished from, a trademark registered in its territory; and
- (b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trademark is registered.

4. Recognizing the need to address the unauthorized copying¹⁴⁰ 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 recognizing the need to deter such harm, each Party shall

¹³⁵ It is understood that a Party may comply with subparagraph (b) by addressing such significant acts under its criminal procedures and penalties for non-authorized uses of protected works, performances and phonograms in its domestic law.

¹³⁶ A Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights owner in relation to the marketplace.

¹³⁷ For greater certainty, it is understood that a Party may comply with its obligation under Article QQ.H.7.2 relating to importation and exportation of counterfeit trademark goods or pirated copyright goods by providing that distribution or sale of such goods on a commercial scale is an unlawful activity subject to criminal penalties. Furthermore, each Party confirms that criminal procedures and penalties as specified in Articles QQ.H.7.1, QQ.H.7.2 and QQ.H.7.3 are applicable in any free trade zones in a Party.

¹³⁸ A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

¹³⁹ 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.

¹⁴⁰ For purposes of this Article, a Party may treat the term “copying” as synonymous with reproduction.

Without Prejudice

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 offenses for which this Article requires the Parties to provide for criminal procedures and penalties, Parties shall ensure that criminal liability for aiding and abetting is available under its law.

6. With respect to the offences described in Article QQ.H.7 (1)-(5) above, each Party shall provide:

- (a) penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity¹⁴¹;
- (b) that its judicial authorities shall have the authority, when determining penalties, to account for the seriousness of the circumstances, which may include those that involve threats to, or effects on, health or safety¹⁴²;
- (c) that its judicial or other competent authorities shall 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 offense, documentary evidence relevant to the alleged offense and assets derived from, or obtained through the alleged infringing activity;

Where a Party requires the identification of items subject to seizure as a prerequisite for issuing any such judicial order, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure;

- (d) that its judicial authorities shall have the authority to order the forfeiture, at least for serious offenses, of any assets derived from, or obtained through the infringing activity;
- (e) that its judicial authorities shall have the authority to order the forfeiture or destruction of
 - (i) all counterfeit trademark goods or pirated copyright goods; and
 - (ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trademark goods; and

¹⁴¹ It is understood that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

¹⁴² A Party may also account for such circumstances through a separate criminal offense.

Without Prejudice

- (iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offense.

In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, such goods shall be 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 and subparagraph (c) shall occur without compensation of any kind to the defendant;

- (f) that its judicial or other competent authorities shall have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil¹⁴³ infringement proceedings;
- (g) that its competent authorities may act upon their own initiative to initiate a legal action without the need for a formal complaint by a private party or right holder¹⁴⁴.

7. With respect to the offences described in Article QQ.H.7 (1)-(5) above, 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 that of the assets derived from, or obtained directly or indirectly through, the infringing activity.

Article QQ.H.8: {Trade Secrets}^{145,146}

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention, each Party shall ensure that natural and legal persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state commercial enterprises) without their consent in a manner contrary to honest commercial practices.¹⁴⁷ As used in

¹⁴³ A Party may also provide such authority in connection with administrative infringement proceedings.

¹⁴⁴ With regard to copyright and related rights piracy provided for by QQ.H.7.1 (Commercial Scale), a Party may limit application of subparagraph (h) to the cases where there is an impact on the right holder's ability to exploit the work in the market.

¹⁴⁵ For greater certainty, this Article is without prejudice to a Party's measures protecting good faith lawful disclosures to provide evidence of a violation of that Party's law.

¹⁴⁶ Drafter's note: The Parties understand that this Article is without prejudice to a Party's measures in relation to whistleblowing.

¹⁴⁷ For the purposes of this paragraph "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

Without Prejudice

this Chapter, trade secrets encompass, at a minimum, undisclosed information as provided for in Article 39.2 of the TRIPS Agreement.

2. Subject to Paragraph 3, Each Party shall provide for criminal procedures and penalties for one or more of the following:

- (a) the unauthorized, willful access to a trade secret held in a computer system;
- (b) the unauthorized, willful misappropriation of a trade secret, including by means of a computer system; or
- (c) the fraudulent disclosure, or alternatively, the unauthorized and willful disclosure of a trade secret, including by means of a computer system.

3. With respect to the acts referred to in Paragraph 2, a Party may, where appropriate, limit the availability of such criminal procedures, or limit the level of penalties available, to one or more of the following cases:

- (a) the acts are for purposes of commercial advantage or financial gain;
- (b) the acts are related to a product or service in national or international commerce;
- (c) the acts are intended to injure the owner of such trade secret;
- (d) the acts are directed by or for the benefit of or in association with a foreign economic entity; or
- (e) the acts are detrimental to a Party's economic interests, international relations, or national defense or national security¹⁴⁸.

Article QQ.H.9: {Protection of Encrypted Program-Carrying Satellite and Cable Signals}

1. Each Party shall make it a criminal offense to:

- (a) manufacture, assemble, modify¹⁴⁹, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know¹⁵⁰ that the device or system meets at least one of the following conditions:
 - (i) it is intended to be used to assist,

¹⁴⁸ A Party may deem the term "misappropriation" to be synonymous with "unlawful acquisition."

¹⁴⁹ For greater certainty, a Party may treat "assemble" and "modify" as incorporated in "manufacture."

¹⁵⁰ For the purposes of this paragraph, a Party may provide that "having reason to know" may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act, as part of the Party's "knowledge" requirements. A Party may treat "having reason to know" as meaning "wilful negligence."

Without Prejudice

- (ii) it is primarily of assistance, or
 - (iii) its principal function is solely to assist,
 - in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor¹⁵¹ of such signal¹⁵²; and
 - (b) with respect to an encrypted program-carrying satellite signal, willfully:
 - (i) receive¹⁵³ such a signal; or
 - (ii) further distribute¹⁵⁴ such signal
 - knowing that it has been decoded without the authorization of the lawful distributor of the signal.
2. Each Party shall provide for civil remedies for any person that holds an interest in an encrypted program carrying satellite signal or its content and who is injured by any activity described in paragraph 1.
3. Each Party shall provide for criminal penalties or civil remedies¹⁵⁵ for willfully:
- (a) manufacturing or distributing equipment knowing that the equipment is intended to be used in the unauthorized reception of any encrypted program-carrying cable signal; and
 - (b) receiving, or assisting another to receive¹⁵⁶, an encrypted program-carrying cable signal without authorization of the lawful distributor of the signal.

Article QQ.H.11: {Government Use of Software}

1. Each Party recognizes the importance of promoting the adoption of measures to enhance government awareness of respect for intellectual property rights and of the detrimental effects of intellectual property rights infringement.

¹⁵¹ With regard to the criminal offences and penalties in paragraphs 1 and 3, a Party may require a showing of intent to avoid payment to the lawful distributor or a showing of intent to otherwise secure a pecuniary benefit to which the recipient is not entitled.

¹⁵² The obligation regarding export may be met by making it a criminal offence to possess and distribute such a device or system. For the purposes of QQ.H.9, a Party may provide that a “lawful distributor” means a person who has the lawful right in that Party’s territory to distribute the encrypted program-carrying signal and authorize its decoding.

¹⁵³ For greater certainty and for purposes of Article QQ.H.9.1(b) and QQ.H.9.3(b), a Party may provide that wilful receipt of an encrypted program-carrying satellite or cable signal means receipt and use of the signal, or means receipt and decoding of the signal.

¹⁵⁴ For greater certainty, a Party may interpret “further distribute” as “retransmit to the public.”

¹⁵⁵ If a Party provides for civil remedies, it may require a showing of injury.

¹⁵⁶ A Party may comply with its obligation in respect of “assisting another to receive” by providing criminal penalties for a person willfully publishing any information in order to enable or assist another person to receive a signal without authorization of the lawful distributor of the signal.

Without Prejudice

2. Each Party shall adopt or maintain appropriate laws, regulations, policies, orders, government-issued guidelines, or administrative or executive decrees providing that its central government agencies use only non-infringing computer software protected by copyright and related rights, and if applicable, only use such computer software in a manner authorized by the relevant license. These measures shall apply to the acquisition and management of such software for government use¹⁵⁷.

Section I: {Internet Service Providers}

1. The Parties recognize the importance of facilitating the continued development of legitimate online services operating as intermediaries and, in a manner consistent with Article 41 of the TRIPS Agreement, providing enforcement procedures that permit effective action by rights holders against copyright infringement¹⁵⁸ covered under this Chapter that occurs in the online environment. Accordingly, each Party shall ensure that legal remedies are available for rights holders to address such infringement and shall establish or maintain appropriate safe harbors in respect of online services that are Internet Service Providers¹⁵⁹. This framework of legal remedies and safe harbors shall include:

- (a) legal incentives¹⁶⁰ for Internet Service Providers to cooperate with copyright owners to deter the unauthorized storage and transmission of copyrighted materials or, in the alternative, to take other action to deter the unauthorized storage and transmission of copyrighted materials; and
 - (b) limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf¹⁶¹.
2. The limitations described in paragraph 1(b) shall include limitations in respect of the following functions:

¹⁵⁷ For greater certainty, paragraph 2 should not be interpreted as encouraging regional government agencies to use infringing computer software or, if applicable to use computer software in a manner which is not authorized by the relevant license.

¹⁵⁸ For the purposes of this Article, “copyright” includes related rights.

¹⁵⁹ For the purposes of this Section, “Internet service provider” means:

- (a) A provider of online services for the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing, undertaking the function in paragraph 2(a);
- (b) A provider of online services undertaking the functions in paragraphs 2(c) or (d).

For greater certainty, “Internet service provider” includes a provider of the services listed above who engages in caching carried out through an automated process.

¹⁶⁰ For greater certainty, the Parties understand that implementation of the obligations in subparagraph 1(a) on “legal incentives” may take different forms.

¹⁶¹ It is understood that, to the extent that a Party determines, consistent with its international legal obligations, that a particular act does not constitute copyright infringement, there is no obligation to provide for a limitation in relation to that act.

Without Prejudice

- (a) transmitting, routing, or providing connections for material without modification of its content¹⁶², or the intermediate and transient storage of such material done automatically in the course of such a technical process;
 - (b) caching carried out through an automated process;
 - (c) storage¹⁶³, at the direction of a user, of material residing on a system or network controlled or operated by or for the service provider¹⁶⁴; and
 - (d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.
3. To facilitate effective action to address infringement, each Party shall prescribe in its law conditions for Internet Service Providers to qualify for the limitations described in paragraph 1(b), or alternatively, shall provide for circumstances under which Internet Service Providers do not qualify for the limitations described in paragraph 1(b)^{165,166}:
- (a) With respect to the functions referred to in paragraph 2(c) and 2(d) above, such conditions shall include a requirement for Internet service providers to expeditiously remove or disable access to material residing on their networks or systems upon obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement

¹⁶² Such modification does not include modifications made as part of a technical process or for solely technical reasons such as division into packets.

¹⁶³ For greater certainty, Parties may interpret “storage” as “hosting”.

¹⁶⁴ For greater certainty, such storage of material may include e-mails and their attachments stored in the Internet Service Provider’s server and web pages residing on the Internet Service Provider’s server.

¹⁶⁵ A Party may comply with the obligations in Paragraphs 3, by maintaining a framework wherein:

- (i) there is a stakeholder organization that includes representatives of both Internet Service Providers and rights holders, established with government involvement;
- (ii) such stakeholder organization develops and maintains effective, efficient, and timely procedures for entities certified by the stakeholder organization to verify without undue delay the validity of each notice of alleged copyright infringement by confirming that the notice is not the result of mistake or misidentification, before forwarding such verified notice to the relevant Internet Service Provider; and
- (iii) there are appropriate guidelines for Internet Service Providers to follow in order to: qualify for the limitation described in paragraph 1(b), including requiring that such Internet Service Provider promptly remove or disable access to the identified materials upon receipt of a verified notice; and be exempted from liability for having done so in good faith in accordance with such guidelines; and
- (iv) there are appropriate measures that provide for liability where an Internet Service Provider has actual knowledge of the infringement or awareness of facts or circumstances from which the infringement is apparent.

¹⁶⁶ It is understood that Parties that have yet to implement the obligations set forth in paragraphs 3 and 4 will do so in a manner that is both effective and consistent with that Party's existing constitutional provisions. To that end, a Party may establish an appropriate role for the government that does not impair the timeliness of the process set forth under paragraphs 3 or 4 or entail advance government review of each individual notice.

Without Prejudice

is apparent, such as through receiving a notice¹⁶⁷ of alleged infringement from the right holder or a person authorized to act on its behalf,

- (b) An Internet Service Provider that removes or disables access to material in good faith pursuant to and consistent with sub-paragraph (a) shall be exempt from any liability for having done so, provided that it takes reasonable steps in advance or promptly after to notify the person whose material is removed or disabled¹⁶⁸.
4. Where a system for counter-notices is provided under a Party's law, and where material has been removed or access has been disabled in accordance with paragraph 3, that Party shall require that the Internet Service Provider restore the material subject to a counter-notice, unless the person giving the original notice seeks judicial relief within a reasonable period of time.
5. Each Party shall ensure that monetary remedies are available in its legal system against any person who makes a knowing material misrepresentation in a notice or counter-notice that causes injury to any interested party¹⁶⁹ as a result of an Internet Service Provider relying on the misrepresentation.
6. Eligibility for the limitations in paragraph 1 may not be conditioned on the Internet Service Provider monitoring its service or affirmatively seeking facts indicating infringing activity.
7. Each Party shall provide procedures, whether judicial or administrative, in accordance with that Party's legal system, and consistent with principles of due process and privacy, enabling a copyright owner who has made a legally sufficient claim of copyright infringement to obtain expeditiously from an Internet Service Provider information in the provider's possession identifying the alleged infringer, where such information is sought for the purpose of protecting or enforcing such copyright.
8. It is understood that the failure of an Internet Service Provider to qualify for the limitations in paragraph 1 does not itself result in liability. Moreover, this Article is without prejudice to the availability of other limitations and exceptions to copyright, or any other defenses under a Party's legal system.

¹⁶⁷ For greater certainty, such a notice, as may be set out under a Party's law, must contain information that is reasonably sufficient to enable the online service provider to identify the work, performance or phonogram claimed to be infringed, the alleged infringing material, and the online location of the alleged infringement, and that has a sufficient indicia of reliability with respect to the authority of the person sending the notice.

¹⁶⁸ With respect to the function in subparagraph 2(b), a Party may limit the requirements of paragraph 3 related to an Internet Service Provider removing or disabling access to infringing material to circumstances in which the service provider becomes aware or receives notification that the cached material has been removed or access to it has been disabled at the originating site.

¹⁶⁹ For greater certainty, it is understood "any interested party" may be limited to those with a legal interest recognized under that Party's law.

Without Prejudice

9. The Parties recognize the importance, in implementing their obligations under this Article, of taking into account the impacts on rights holders and Internet Service Providers.

{This Section includes Annexes QQ.Annex.1-2¹⁷⁰}
{Subject to legal scrub, confirmation of cross-references}

Section J: {Final Provisions}

1. Except as otherwise provided in QQ.A.10*bis* and paragraphs 2-4, each Party shall give effect to the provisions of this Chapter on the date of entry into force of this Agreement for that Party.
2. During the relevant periods set out below, a Party shall not amend an existing measure or adopt a new measure that is less consistent with its obligations under the provisions referenced below for that Party than relevant measures that are in effect as of the date of signature of this Agreement. This provision does not affect the rights and obligations of a Party under an international agreement to which it and another Party are party.
3. With respect to works of any Party that avails itself of a transition permitted to it with regard to implementation of Article QQ.G.6 as it relates to the term of copyright protection (transition Party), Japan shall apply at least the term of protection available under the transition Party's domestic law for the relevant works during the transition period and apply Article QQ.A.9.1 with respect to copyright term only when that Party fully implements Article QQ.G.6.
4. With regard to obligations subject to a transition period, a Party shall fully implement its obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified below, which begins on the date of entry into force of the Agreement for that Party.
 - (a) In the case of Malaysia:
 - (i) With respect to Article QQ.A.8.2(a)(Madrid) and (d)(STLT), 4 years;
 - (ii) With respect to Article QQ.A.8.2(b)(Budapest), 4 years;
 - (iii) With respect to Article QQ.A.8.2(c)(UPOV91), 4 years;
 - (iv) With respect to sound marks in Article QQ.C.1 (types of signs registrable as trademarks), 3 years;
 - (v) With respect to QQ.H.6 (only with respect to 'confusingly similar' and 'export'), 4 years;

¹⁷⁰ Negotiators' Note to Legal Scrub: Please help us to create a link between the main text and standards.

Without Prejudice

- (vi) With respect to QQ.H.6.6(b)-(c)(ex officio border enforcement), 4 years;
 - (vii) With respect to QQ.H.9.2 (civil procedures for satellite signals), 4 years;
 - (viii) With respect to QQ.E.17 (patent linkage), 4.5 years;
 - (ix) With respect to QQ.E.20 (biologics), 5 years;
 - (x) With respect to QQ.E.14.2 (patent term adjustment for marketing approval delays), 4.5 years;
 - (xi) With respect to Article G.6(b) (copyright term for author-based works), 2 years.
- (b) In the case of Mexico:
- (i) With respect to Article QQ.A.8.2(c)(UPOV91), 4 years;
 - (ii) With respect to Article QQ.E.13 (Agricultural Chemical Products), 5 years;
 - (iii) With respect to Section I (Internet Service Providers), 3 years;
 - (iv) With respect to QQ.E.14.2 (patent term adjustment for unreasonable curtailment), 4.5 years;
 - (v) With respect to QQ.E.20 (Biologics), 5 years;
 - (vi) With respect to QQ.E.16 (pharmaceutical data protection), 5 years.
- (c) In the case of New Zealand:
- (i) With respect to Article QQ.G.6, upon entry into force of the Agreement, New Zealand shall provide that the term of protection for a work expires 60 years from the relevant date in Article QQ.G.6(a) and (b)(i) that is the basis for calculating the term of protection. No later than 8 years after entry into force of this Agreement for New Zealand, New Zealand shall provide the term of protection for works as set forth in Article QQ.G.6(a) and (b)(i). Further to Article QQ.A.10*bis*, New Zealand shall not be required to restore or extend the term of protection to works that have fallen into the public domain in its territory in accordance with this transition period.
- (d) In the case of Peru:
- (i) With respect to QQ.E.16.2, five years;
 - (ii) With respect to QQ.E.20, 10 years.

Without Prejudice

- (e) In the case of Viet Nam:
- (i) With respect to Article QQ.A.8.2(b) (Budapest), 2 years;
 - (ii) With respect to Article QQ.A.8.2(e) – (f) (WCT and WPPT), 3 years;
 - (iii) With respect to sound marks in Article QQ.C.1 (Types of Signs Registrable as Trademarks), 3 years;
 - (iv) With respect to Article QQ.E.12.3-4 (PTE for patent office delays), 3 years;
 - (v) With respect to Article QQ.E.13 (ag chem), 5 years;
 - (vi) With respect to Article QQ.E.17 (patent linkage), 3 years;
 - (vii) With respect to Article QQ.E.14.2 (patent term adjustment for marketing approval delays), 5 years;
 - (viii) With respect to QQ.G.6(a) (copyright term for life-based works), 5 years;
 - (ix) With respect to QQ.H.6.6(b) (ex officio border measures for export), 3 years;
 - (x) With respect to QQ.H.6.6(b) (ex officio border measures for in-transit), 2 years;
 - (xi) With respect to QQ.I (ISP liability), 3 years;
 - (xii) With respect to QQ.H.7.6(h) (enforcement without IPR holder request for rights other than copyright), 3 years;
 - (xiii) With respect to QQ.H.7.2 (copyright importation), 3 years;
 - (xiv) With respect to QQ.H.9.1 (criminal remedies for satellite signals), 3 years;
 - (xv) With respect to QQ.H.9.3 (cable signals), 3 years;
 - (xvi) With respect to QQ.H.8.2-3 (criminal remedies for trade secrets), 3 years;
 - (xvii) With respect to QQ.H.7.4 (camcording), 3 years;
 - (xviii) With respect to QQ.G.10 (TPMs criminal), 3 years;
 - (xix) With respect to QQ.G.13 (RMIs criminal), 3 years;
 - (xx) With respect to QQ.H.7.2 (exportation on a commercial scale), 3 years;
 - (xxi) With respect to QQ.H.7.1(b) (definition of commercial scale not carried out for financial gain), 3 years;
 - (xxii) With respect to QQ.E.16 (data protection), 10 years*;
 - (xxiii) With respect to QQ.E.20 (biologics), 10 years*;
 - (xxiv) With respect to Article QQ.E.14.2 (patent term adjustment for office delays for pharmaceutical products), 5 years^;
 - (xxv) With respect to Article QQ.E.14.2 (patent term adjustment for office delays for agricultural chemical products), 5 years^;

Without Prejudice

*For those transition periods of 10 years, the Parties will consider up to 2 justified requests from Viet Nam for an extension of the transition period for up to 4 additional years upon each request.

^For transitions for Article QQE.14.2 for pharmaceutical products and agricultural chemical products, the Parties will consider a request from Vietnam for an extension of the transition period for up to one additional year. Parties will give sympathetic consideration to such requests.

ANNEX TO IP CHAPTER 1

In order to facilitate the enforcement of copyright on the Internet and to avoid unwarranted market disruption in the online environment, paragraph(s) 3-4 shall not apply to a Party, provided that, if upon the date of agreement in principle of this Agreement, it continues to:

1. prescribe in its law circumstances under which Internet Service Providers do not qualify for the limitations described in paragraph 2;
2. provide statutory secondary liability for copyright infringement where a person, by means of the Internet or another digital network, provides a service primarily for the purpose of enabling acts of copyright infringement, in relation to prescribed factors, such as:
 - (a) whether the person marketed or promoted the service as one that could be used to enable acts of copyright infringement;
 - (b) whether the person had knowledge that the service was used to enable a significant number of acts of copyright infringement;
 - (c) whether the service has significant uses other than to enable acts of copyright infringement;
 - (d) the person's ability, as part of providing the service, to limit acts of copyright infringement, and any action taken by the person to do so;
 - (e) any benefits the person received as a result of enabling the acts of copyright infringement; and
 - (f) the economic viability of the service if it were not used to enable acts of copyright infringement;
3. require Internet Service Providers carrying out the functions referred to in paragraph 2(a) and 2(c) to participate in a system for forwarding notices of alleged infringement, including where material is made available online, and where they fail to do so, subjecting them to pre-established monetary damages for that failure;
4. induce Internet Service Providers offering information location tools to remove within a specified period of time any reproductions of material that they make, and

Without Prejudice

communicate to the public, as part of offering the location information tool upon receiving a notice of alleged infringement and after the original material has been removed from the electronic location set out in the notice; and

5. induce Internet Service Providers carrying out the function referred to in paragraph 2(c) to remove or disable access to material upon becoming aware of a decision of a court to the effect that the person storing the material infringes copyright in the material.

For such Party, in light of, *inter alia* (ii), paragraph 1(a), “legal incentives” shall not mean the conditions for Internet Service Providers to qualify for the limitations provided in paragraph 1(b), as set out in paragraph 3.

ANNEX TO IP CHAPTER 2

As an alternative to implementing Article QQ.xx (ISP), a Party may implement Article 17.11.23 of the United States – Chile Free Trade Agreement (“US-Chile FTA”)¹⁷¹.

ANNEX TO IP CHAPTER 3 {UPOV NEW ZEALAND}

1. Notwithstanding the obligations in Article QQ.A.8, and subject to paragraphs 2 through 4 of this Annex, New Zealand shall:

- (a) accede to the UPOV (1991) Convention within three years of the date of entry into force of this Agreement for New Zealand; or
- (b) adopt a *sui generis* plant variety rights system that gives effect to the UPOV (1991) Convention within three years of the date of entry into force of this Agreement for New Zealand.

2. Nothing in paragraph 1 shall preclude the adoption by New Zealand of measures it deems necessary to protect indigenous plant species in fulfillment of its obligations under the Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against a person of another Party.

3. The consistency of any measures referred to in paragraph 2 with the obligations in paragraph 1 shall not be subject to the dispute settlement provisions of this Agreement.

4. The interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter BBB (Dispute Settlement) shall otherwise apply to this Annex. A panel established under BBB.7 (Establishment of a Panel) may be requested to determine only whether any measure referred to in paragraph 2 is inconsistent with a Party’s rights under this Agreement.

¹⁷¹ Negotiator’s note: The language of Article 17.11.23 will be included in the Agreement by incorporation or thoroughly replicating the language in an annex to the Chapter.

Without Prejudice

ANNEX TO IP CHAPTER 5 - BRUNEI

1. Brunei may, for the purpose of granting protection as specified in Articles 18.E.16.(1), 18.E.16.(2) and 18.E.20.1, require an applicant to commence the process of obtaining marketing approval for pharmaceutical products covered under these Articles within 18 months from the date the product is first granted marketing approval in any country.
2. For greater certainty, the periods of protection referenced in Articles 18.E.16.(1), 18.E.16.(2) and 18.E.20.1 shall begin on the date of marketing approval of the pharmaceutical product in Brunei.

ANNEX TO IP CHAPTER 4 -CHILE

1. Nothing in Article QQ.E.16(1)-(2) or Article QQ.E.20 prevents Chile from maintaining or applying the provisions of Article 91 of Chile's Law No. 19.039 on Industrial Property, as in effect on the date of agreement in principle of the TPP Agreement.
2. Notwithstanding Article AA.2, paragraph 1 is without prejudice to any Party's rights and obligations under an international agreement in effect prior to the date of entry into force of the TPP Agreement for Chile, including any rights and obligations under trade agreements between Chile and another Party.

ANNEX TO IP CHAPTER 5 - MALAYSIA

1. Malaysia may, for the purpose of granting protection as specified in Articles 18.E.16.(1), 18.E.16.(2) and 18.E.20.1, require an applicant to commence the process of obtaining marketing approval for pharmaceutical products covered under these Articles within 18 months from the date the product is first granted marketing approval in any country.
2. For greater certainty, the periods of protection referenced in Articles 18.E.16.(1), 18.E.16.(2) and 18.E.20.1 shall begin on the date of marketing approval of the pharmaceutical product in Malaysia.

ANNEX TO IP CHAPTER – PERU

To the extent that Andean Decision 486, *Common Industrial Property Regime*, and Andean Decision 689, *Adequacy of Certain Articles of Decision 486*, restricts Peru's implementation of its obligations set forth in TPP Article QQ.E.12.3 (Patent Term Adjustments for Patent Office Delays) and Article QQ.E.14.2 (Patent Term Adjustment for Unreasonable Curtailment), Peru commits to make its best efforts to obtain a waiver from the Andean Community that allows it to adjust its patent term in a way that is consistent with Article QQ.E.12.3. and QQ.E.14.2 Further, if Peru demonstrates that the Andean Community withheld its request for a waiver despite its best efforts, Peru will continue

Without Prejudice

ensuring that it does not discriminate with respect to the availability or enjoyment of patent rights based on the field of technology, the place of invention, and whether products are imported or locally produced. Thus, Peru confirms that the treatment of pharmaceutical patents will be no less favorable than treatment of other patents in respect of the processing and examination of patent applications.

ANNEX TO IP CHAPTER – PERU

1. If Peru relies pursuant to TPP Article QQ.E.16.1(b) on a marketing approval granted by another Party and grants approval within 6 months of the filing of a complete application for marketing approval filed in Peru, Peru may provide that the protection specified in Article QQ.E.16.1(b) and Article QQ.E.20, as applicable, shall begin with the date of the first marketing approval relied on. Peru shall apply the term of protection established Article 16.10.2(b) of the United States – Peru Trade Promotion Agreement.
2. Peru may apply the prior paragraph to TPP Article QQ.E.16.2.