

# **EUROPEAN VIETNAM FREE TRADE AGREEMENT**

## **CHAPTER 12**

### **INTELLECTUAL PROPERTY**

#### **SECTION A**

#### **GENERAL PROVISIONS AND PRINCIPLES**

##### **ARTICLE 12.1**

###### **Objectives**

1. The objectives of this Chapter are to:
  - (a) facilitate the creation, production and commercialisation of innovative and creative products between the Parties, contributing to a more sustainable and inclusive economy in each Party; and
  - (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.
2. 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 12.2**

###### **Nature and Scope of Obligations**

1. The Parties affirm their rights and obligations under the international treaties dealing with intellectual property to which they are party, including

the TRIPS Agreement. The Parties shall ensure an adequate and effective implementation of those treaties. This Chapter shall complement and further specify those rights and obligations between the Parties with an aim at ensuring adequate and effective implementation of those treaties, as well as the balance between the rights of intellectual property holders and the interest of the public.

2. For the purposes of this Agreement, intellectual property refers at least to all categories of intellectual property that are referred to in Sections 1 to 7 of Part II of the TRIPS Agreement, namely:

- (a) copyright and related rights;
- (b) trademarks;
- (c) geographical indications;
- (d) industrial designs;
- (e) patent rights;
- (f) layout-designs (topographies) of integrated circuits;
- (g) protection of undisclosed information; and
- (h) plant varieties.

3. The protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the *Paris Convention for the Protection of Industrial Property* of 20 March 1883, as last revised at Stockholm on 14 July 1967 (hereinafter referred to as "the Paris Convention").

## **ARTICLE 12.3**

### **Most-Favoured-Nation Treatment**

With regard to the protection of intellectual property, any advantage, favour,

privilege or immunity granted by a Party to the nationals of any third country shall be accorded immediately and unconditionally to the nationals of the other Party, subject to the exceptions provided for in Articles 4 and 5 of the TRIPS Agreement.

## **ARTICLE 12.4**

### **Exhaustion**

Each Party shall be free to establish its own regime for the exhaustion of intellectual property rights subject to the relevant provisions of the TRIPS Agreement.

## **SECTION B**

### **STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS**

#### **SUB-SECTION 1**

### **COPYRIGHT AND RELATED RIGHTS**

## **ARTICLE 12.5**

### **Protection Granted**

1. The Parties shall comply with the rights and obligations set out in the following international treaties:
  - (a) the *Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886*, as last revised at Paris on 24 July 1971 (hereinafter referred to as "the Berne Convention");
  - (b) the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations*, done at Rome on 26

October 1961; and

(c) the TRIPS Agreement.

2. The Parties shall accede to the following international treaties within three years from the date of entry into force of this Agreement:

(a) the *WIPO Copyright Treaty*, adopted in Geneva on 20 December 1996; and

(b) the *WIPO Performances and Phonograms Treaty*, adopted in Geneva on 20 December 1996.

## **ARTICLE 12.6**

### **Authors**

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

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

## **ARTICLE 12.7**

### **Performers**

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

- (a) the fixation of their performances;

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

## **ARTICLE 12.8**

### **Producers of Phonograms**

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

- (a) direct or indirect reproduction by any means and in any form, in whole or in part, of their phonograms;
- (b) distribution to the public, by sale or other transfer of ownership, of their phonograms, including copies thereof; and
- (c) the making available to the public, by wire or wireless means, of their phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

## **ARTICLE 12.9**

## **Broadcasting Organisations**

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

- (a) the fixation of their broadcasts;
- (b) the reproduction of fixations of their broadcasts;
- (c) the distribution to the public of fixations of their broadcasts; and
- (d) the rebroadcasting of their broadcasts by wireless means.

### **ARTICLE 12.10**

#### **Broadcasting and Communication to the Public**

Each Party shall provide to performers and producers of phonograms a right in order to ensure that a single equitable remuneration is paid by the user to them, if a phonogram published for commercial purposes or a reproduction of such phonogram is used for broadcasting by wireless means or for any communication to the public. Each Party shall ensure that this remuneration is shared between the relevant performers and phonogram producers. Each Party may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

### **ARTICLE 12.11**

#### **Term of Protection**

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for not less than 50 years after his death, irrespective of the date when the work is lawfully made available to the public.

2. In the case of a work of joint authorship, the term referred to in paragraph

1 shall be calculated from the death of the last surviving author.

3. The rights of performers shall expire not less than 50 years after the date of the performance. If a fixation of the performance is lawfully published or lawfully communicated to the public within that period, those rights shall expire not less than 50 years from the date of the first lawful publication or the first lawful communication to the public, whichever is earlier.

4. The rights of producers of phonograms shall expire not less than 50 years after the fixation is made. If the phonogram has been lawfully published within this period, those rights shall expire not less than 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period referred to in the first sentence, and if the phonogram has been lawfully communicated to the public within that period, those rights shall expire not less than 50 years from the date of the first lawful communication to the public.

5. The rights of broadcasting organisations shall expire not less than 50 years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air, including by cable or satellite.

6. The terms laid down in this Article shall be calculated from 1 January of the year following the event which gives rise to them.

## **ARTICLE 12.12**

### **Protection of Technological Measures**

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which are used by the right holder of any copyright or related right which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, offer to public for sale or rental,

or possession for commercial purposes of devices, products or components or the provision of services, which:

- (a) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures;
- (b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.

3. In providing adequate legal protection pursuant to paragraphs 1 and 2, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing those paragraphs. The obligations under paragraphs 1 and 2 are without prejudice to the rights, limitations, exceptions, or defences to infringements of copyright or related rights under each Party's domestic law.

4. For the purposes of this Article, the term "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or related right as provided for by domestic legislation. Technological measures shall be deemed "effective" where the use of a protected work or other subject-matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the objective of protection.

## **ARTICLE 12.13**

### **Protection of Rights Management Information**

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



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

if this person knows, or has reasonable grounds to know, that by so doing this person is inducing, enabling, facilitating or concealing an infringement of any copyright or any related right as provided for by domestic legislation.

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

3. Paragraph 2 applies when any of the items of information referred to in that paragraph is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Sub-Section.

## **ARTICLE 12.14**

### **Exceptions and Limitations**

1. Each Party may provide for exceptions and limitations to the rights set out in Articles 12.6 (Authors) to 12.10 (Broadcasting and Communication to the Public) only in certain special cases which do not conflict with a normal exploitation of the subject-matter and do not unreasonably prejudice the legitimate interests of the right holders in accordance with the international treaties to which they are party.

2. Each Party shall provide that acts of reproduction referred to in Articles 12.6 (Authors) to 12.10 (Broadcasting and Communication to the Public), which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

(a) a transmission in a network between third parties by an intermediary; or

(b) a lawful use,

of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Articles 12.6 (Authors) to 12.10 (Broadcasting and Communication to the Public).

## **ARTICLE 12.15**

### **Artists' Resale Right in Works of Art**

1. A Party may provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, to receive a royalty based on the sale price obtained for any resale of the work subsequent to the first transfer of the work by the author.

2. The right referred to in paragraph 1 applies to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any professional dealers in works of art.

3. A Party may provide that the right referred to in paragraph 1 does not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.

4. The right referred to in paragraph 1 may be claimed in a Party only if the domestic legislation of that Party to which the author belongs so permits, and to the extent permitted by the Party where this right is claimed. The procedure for collection and the amounts shall be determined in domestic legislation.

## **ARTICLE 12.16**

### **Cooperation on Collective Management of Rights**

The Parties shall endeavour to promote dialogue and cooperation between their respective collective management organisations for the purposes of promoting the availability of works and other protected subject-matter in the territories of the Parties and the transfer of royalties for the use of such works or other protected subject-matter.

## **SUB-SECTION 2**

### **TRADEMARKS**

## **ARTICLE 12.17**

### **International Treaties**

1. The Parties affirm their rights and obligations under the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007.
2. Each Party shall use the classification provided for in the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, done at Nice on 15 June 1957, as amended on 28 September 1979 (hereinafter referred to as "Nice Classification").<sup>1</sup>
3. Each Party shall simplify and develop its trademark registration procedures using, *inter alia*, the *Trademark Law Treaty*, adopted at Geneva on 27 October 1994, and the *Singapore Treaty on the Law of Trademarks*, done at

Singapore on 27 March 2006, as reference points.

## **ARTICLE 12.18**

### **Rights Conferred by a Trademark**

A registered trademark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

- (a) any sign which is identical with the trademark in relation to goods or services which are identical with those for which the trademark is registered;<sup>2</sup> and
- (b) any sign which is identical with or similar to the trademark in relation to goods or services which are identical with or similar to those for which the trademark is registered, where such use would result in a likelihood of confusion on the part of the public.

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<sup>1</sup> For greater certainty, a Party shall use the updated versions of the Nice Classification to the extent that the updated version has been published by WIPO and, in the case of Viet Nam, the official translation has been published.

<sup>2</sup> For greater certainty, this is without prejudice to Article 12.21 (Exceptions to the Rights Conferred by a Trademark).

## **ARTICLE 12.19**

### **Registration Procedure**

1. Each Party shall provide for a system for the registration of trademarks in which each final refusal to register a trademark by the relevant trademark administration shall be communicated in writing and be duly reasoned.
2. Each Party shall provide for the possibility to oppose trademark applications and an opportunity for the trademark applicant to respond to such

opposition.

3. Each Party shall provide a publicly available electronic database of published trademark applications and trademark registrations.

## **ARTICLE 12.20**

### **Well-Known Trademarks**

For the purposes of giving effect to protection of well-known trademarks, as referred to in Article 6*bis* of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, the Parties shall give consideration to the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks*, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

## **ARTICLE 12.21**

### **Exceptions to the Rights Conferred by a Trademark**

Each Party:

(a) shall provide for the fair use of descriptive terms<sup>1</sup> as a limited exception

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<sup>1</sup> The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, where such use is in accordance with honest practices in industrial or commercial matters.

to the rights conferred by trademarks; and

(b) may provide for other limited exceptions,

provided that these exceptions take account of the legitimate interests of the owners of the trademarks and of third parties.

## ARTICLE 12.22

### Revocation of a Registered Trademark<sup>1</sup>

1. Each Party shall provide that a registered trademark shall be liable to revocation if, within a continuous period of five years prior to a request for revocation, it has not been put to genuine<sup>2</sup> use by its owner or the owner's licensee in the relevant territory in connection with the goods or services in respect of which it is registered, without justifiable reasons, except where the use is commenced or resumed at least three months before the request for revocation. A Party may provide that this exception be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the request for revocation may be filed.

2. A Party may provide that a trademark can be liable to revocation if, after the date on which it was registered, it has become, as a result of acts or inactivity of the proprietor, the common name in the trade for a product or service in respect of which it is registered.

3. Any use of a registered trademark by the proprietor of the trademark or with his consent in respect of the goods or services for which it is registered that is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services shall make the trademark liable to revocation or, alternatively, be prohibited by relevant domestic law.

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<sup>1</sup> For Viet Nam "revocation" is equivalent to "termination".

<sup>2</sup> Genuine use implies real use for the purpose of trading in the goods or services in question so as to generate goodwill. In general, this implies actual sales and there must have been some sales of the goods or providing of the services during the relevant period of time. Use in advertising may amount to genuine use. However, mere preparatory steps are not to be regarded as genuine use of a mark. Genuine use is opposed to token or artificial use designed solely to maintain the trade mark on the register.

**SUB-SECTION 3**  
**GEOGRAPHICAL INDICATIONS**

**ARTICLE 12.23**

**Scope of Application**

1. This Sub-Section applies to the recognition and protection of geographical indications for wines, spirits, agricultural products and foodstuffs which are originating in the territories of the Parties.
2. Geographical indications of a Party, which are to be protected by the other Party, shall only be subject to this Sub-Section if they are protected as geographical indications in accordance with the system referred to in Article 12.24 (System of Registration and Protection of Geographical Indications) in the territory of the Party of origin.

**ARTICLE 12.24**

**System of Registration and Protection of Geographical Indications**

1. Each Party shall maintain a system for the registration and protection of geographical indications which shall contain at least the following elements:
  - (a) a register listing geographical indications protected in the territory of that Party;
  - (b) an administrative process verifying that geographical indications to be entered, or maintained, on the register referred to in subparagraph (a) identify a good as originating in a territory, region or locality of a Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
  - (c) an opposition procedure that allows the legitimate interests of any natural

or legal person to be taken into account; and

- (d) procedures for rectification and removal or termination of the effects of the entries on the register referred to in subparagraph (a) that take into account the legitimate interests of third parties and the right holders of the registered geographical indications in question.<sup>1</sup>

2. Each Party may provide in its domestic legislation more extensive protection than is required by this Sub-Section, provided that such protection does not contravene the protection provided under this Agreement.

## **ARTICLE 12.25**

### **Established Geographical Indications**

1. Having completed an opposition procedure and an examination of the geographical indications of the Union listed in Part A of Annex 12-A (List of Geographical Indications), Viet Nam recognises that those indications are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and that they have been registered by the Union in accordance with the system referred to in Article 12.24 (System of Registration and Protection of Geographical Indications). Viet Nam shall protect those geographical indications according to the level of protection provided for in this Agreement.

2. Having completed an opposition procedure and an examination of the geographical indications of Viet Nam listed in Part B of Annex 12-A (List of Geographical Indications), the Union recognises that those indications are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and that they have been registered by Viet Nam in accordance with the system referred to in Article 12.24 (System of Registration and Protection of Geographical Indications). The Union shall protect those geographical indications according to the level of protection provided for in this Agreement.



## ARTICLE 12.26

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- <sup>1</sup> Without prejudice to its domestic legislation on the system of registration and protection of geographical indications, each Party shall provide for legal means for the invalidation of the registration of geographical indications.

### **Amendment of the List of Geographical Indications**

1. The Parties may amend the list of geographical indications in Annex 12-A (List of Geographical Indications) in accordance with the procedure set out in subparagraph 3(a) of Article 12.63 (Working Group on Intellectual Property Rights, including Geographical Indications) and paragraph 1 of Article 17.5 (Amendments) by, *inter alia*:

- (a) removing geographical indications which have ceased to be protected in the country of origin; or
- (b) adding geographical indications, after having completed the opposition procedure and after having examined the geographical indications as referred to in Article 12.25 (Established Geographical Indications) to the satisfaction of both Parties.

2. A geographical indication for wines, spirits, agricultural products or foodstuffs shall not, in principle, be added to Annex 12-A (List of Geographical Indications), if it is a name that on the date of signing of this Agreement is listed in the relevant register of a Party with a status of "Registered".

## ARTICLE 12.27

### **Protection of Geographical Indications**

1. Each Party shall provide the legal means for interested parties to prevent:
- (a) the use of a geographical indication of the other Party listed in Annex 12-A (List of Geographical Indications) for any product that falls within the

product class, as defined in Annex 12-B (Product Classes) and specified in Annex 12-A (List of Geographical Indications) for that geographical indication, and that either:

- (i) does not originate in the country of origin specified in Annex 12-A (List of Geographical Indications) for that geographical indication; or
  - (ii) originates in the country of origin specified in Annex 12-A (List of Geographical Indications) for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party that would apply if the product was for consumption in the other Party;
- (b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and
- (c) any other use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

2. The protection referred to in subparagraph 1(a) shall be provided even where the true origin of the product is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

3. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. A homonymous name which misleads consumers into believing that a product comes from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.

4. When a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of the third country which is homonymous with a geographical indication of the other Party protected under this Sub-Section, it shall inform the other Party thereof and give it an opportunity to comment before the third country's geographical indication becomes protected.

5. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication of the other Party which is not, or ceases to be, protected in its country of origin. Each Party shall notify the other Party if a geographical indication ceases to be protected in the country of origin. Such notification shall take place in accordance with paragraph 3 of Article 12.63 (Working Group on Intellectual Property Rights, including Geographical Indications).

6. A Party shall not be required to protect as a geographical indication a name that conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

## **ARTICLE 12.28**

### **Exceptions**

1. Notwithstanding Article 12.27 (Protection of Geographical Indications), the protection of the geographical indications "Asiago", "Fontina" and "Gorgonzola" listed in Part A of Annex 12-A (List of Geographical Indications) shall not prevent the use of any of these indications in the territory of Viet Nam by any persons, including their successors, who made actual commercial use in good faith of those indications with regard to products in the class of "cheeses" prior to 1 January 2017.

2. Notwithstanding Article 12.27 (Protection of Geographical Indications), the protection of the geographical indication "Feta" listed in Part A of Annex 12-A (List of Geographical Indications) shall not prevent the use of this indication in the territory of Viet Nam by any persons, including their successors, who made actual commercial use in good faith of this indication

with regard to products in the class of "cheeses" made from sheep's milk or made from sheep and goat's milk, prior to 1 January 2017.

3. Notwithstanding Article 12.27 (Protection of Geographical Indications), during a transitional period of 10 years from the date of entry into force of this Agreement the protection of the geographical indication "Champagne", listed in Part A of Annex 12-A (List of Geographical Indications), shall not prevent the use of this indication, or its translation, transliteration or transcription in the territory of Viet Nam by any persons including their successors, who made actual commercial use in good faith of this indication with regard to products in the class of "wines".

4. A Party may provide that any request made under this Sub-Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

5. This Sub-Section shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

## **ARTICLE 12.29**

### **Right of Use of Geographical Indications**

Once a geographical indication is protected under this Agreement, the legitimate use of such geographical indication shall not be subject to any registration of users, or further charges.

## **ARTICLE 12.30**

### **Relationship to Trademarks**

1. When a trademark has been applied for or registered in good faith, or when rights to a trademark have been acquired through use in good faith, in a Party before the applicable date set out in paragraph 2, measures adopted to implement this Sub-Section in that Party shall not prejudice eligibility for or the validity of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to, a geographical indication.
2. For the purposes of paragraph 1, the applicable date is:
  - (a) the date of entry into force of this Agreement with regard to the geographical indications referred to in Article 12.25 (Established Geographical Indications); or
  - (b) the date on which the competent authority of a Party receives from the other Party a request with a complete application for the protection of an additional geographical indication as referred to in Article 12.26 (Amendment of the List of Geographical Indications).
3. A trademark as referred to in paragraph 1 may continue to be protected, used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the domestic legislation on trademarks of the Party concerned.

## **ARTICLE 12.31**

### **Enforcement of Protection**

1. Each Party shall provide for enforcement of protection of geographical indications by appropriate administrative action, to the extent provided for by its domestic law, to prohibit a person from manufacturing, preparing, packaging, labelling, selling, importing or advertising a food commodity in a manner that is

false, misleading or deceptive or is likely to create an erroneous impression regarding its origin.

2. Each Party shall at least enforce the protection provided for in Articles 12.27 (Protection of Geographical Indications) and 12.30 (Relationship to Trademarks) at the request of an interested party.

## **ARTICLE 12.32**

### **General Rules**

1. Products bearing protected geographical indications shall comply with the product specifications, including any amendments thereto, approved by the authorities of the Party in the territory of which the product originates.

2. Any matter arising from product specifications of registered products shall be dealt with in the Working Group on Intellectual Property Rights, including Geographical Indications, referred to in Article 12.63 (Working Group on Intellectual Property Rights, including Geographical Indications).

## **ARTICLE 12.33**

### **Cooperation and Transparency**

1. The Parties shall, either directly or through the Working Group on Intellectual Property Rights, including Geographical Indications, referred to in Article 12.63 (Working Group on Intellectual Property Rights, including Geographical Indications), maintain contact on all matters relating to the implementation and functioning of this Sub-Section. In particular, a Party may request from the other Party information relating to product specifications, including any amendments thereto, and relevant contact points for control or management of geographical indications.

2. Each Party may make publicly available the product specifications, or a summary thereof, and relevant contact points for control or management of geographical indications of the other Party protected pursuant to this Sub-Section.

**SUB-SECTION 4**  
**INDUSTRIAL DESIGNS**

**ARTICLE 12.34**

**International Treaties**

The Parties shall accede to the *Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs*, done at Geneva on 2 July 1999, within two years from the date of entry into force of this Agreement.

**ARTICLE 12.35**

**Protection of Registered Industrial Designs**

1. The Parties shall provide for the protection of independently created industrial designs<sup>1</sup> that are new or original<sup>2</sup>. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with this Sub-Section.<sup>3</sup>

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

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

3. The term "normal use" in subparagraph 2(a) means use by the end user,

excluding maintenance, servicing or repair work.

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

5. The duration of protection available shall amount to at least 15 years.

## **ARTICLE 12.36**

### **Exceptions and Exclusions**

1. A Party may provide limited exceptions to the protection of designs,

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<sup>1</sup> The Parties agree that when the domestic law of a Party so provides, a "design" means the appearance of the whole product or a separable or inseparable part of product.

<sup>2</sup> The Parties agree that when the domestic law of a Party so provides, individual character of designs can also be required. This refers to designs that significantly differ from known designs or combinations of known designs' features. The Union considers designs to have individual character if the overall impression it produces on the informed users differs from the overall impression produced on such a user by any design which has been made available to the public.

<sup>3</sup> It is understood that designs are not excluded from protection simply on the basis that they constitute a part of an article or product, provided that they are visible, fulfil the criteria of this paragraph, and:

(a) fulfil any other criteria for design protection; and (b)  
are not otherwise excluded from design protection, in  
accordance with the Parties' respective domestic law.

provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs, and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

2. Industrial design protection shall not extend to designs dictated essentially by technical or functional considerations.

## **ARTICLE 12.37**



## **Relationship to Copyright**

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

## **SUB-SECTION 5**

### **PATENTS**

#### **ARTICLE 12.38**

##### **International Agreements**

The Parties affirm their rights and obligations under the *Patent Cooperation Treaty*, done at Washington on 19 June 1970, as amended on 28 September 1979 and last modified on 3 October 2001. Each Party shall simplify and develop its patent registration procedures using, *inter alia*, the *Patent Law Treaty*, adopted in Geneva on 1 June 2000, as a reference point.

#### **ARTICLE 12.39**

##### **Patents and Public Health**

1. The Parties recognise the importance of the *Declaration on the TRIPS Agreement and Public Health*, adopted on 14 November 2001 by the Ministerial Conference of the WTO, in Doha. In interpreting and implementing the rights and obligations under this Chapter, the Parties are entitled to rely upon that Declaration.
2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*.

## ARTICLE 12.40

### Administrative Authorisation

1. The Parties recognise that pharmaceutical products protected by a patent on their respective territory are generally subject to an administrative authorisation procedure before being put on their market (hereinafter referred to as the "marketing authorisation procedure").
2. Each Party shall provide for an adequate and effective mechanism to compensate the patent owner for the reduction in the effective patent life resulting from unreasonable delays<sup>1</sup> in the granting of the first marketing authorisation in its respective territory. Such compensation may be in the form of an extension of the duration of the rights conferred by patent protection, equal to the time by which the period referred to in the footnote to this paragraph is exceeded. The maximum duration of this extension shall not exceed two years.
3. As an alternative to paragraph 2, a Party may make available an extension, not exceeding five years<sup>2</sup>, of the duration of the rights conferred by

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<sup>1</sup> For the purposes of this Article, an "unreasonable delay" includes at least a delay of more than two years in the first response to the applicant following the date of filing of the application for marketing authorisation. Any delays that occur in the granting of a marketing authorisation due to periods attributable to the applicant or any period that is out of control of the marketing authorisation authority need not be included in the determination of such delay.

<sup>2</sup> This period can be extended for a further six months in the case of medicinal products for the patent protection to compensate the patent owner for the reduction in the effective patent life as a result of the marketing authorisation procedure. The duration of the extension shall take effect at the end of the lawful term of the patent for a period equal to the period which elapsed between the date on which the application for a patent was filed and the date of the first marketing authorisation to place the product on the market in the Party, reduced by a period of five years.

## **SUB-SECTION 6**

### **PROTECTION OF UNDISCLOSED INFORMATION**

#### **ARTICLE 12.41**

##### **Protection of Undisclosed Information**

1. In order to implement Article 39 of the TRIPS Agreement, and in the course of ensuring effective protection against unfair competition as provided for in Article 10*bis* of the Paris Convention, each Party shall protect confidential information and data submitted to government or governmental agencies in accordance with this Article.

2. If a Party requires, as a condition for approving the marketing of pharmaceutical or agrochemical products, the submission of undisclosed test or other data, the origination of which involves a considerable effort, the Party shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public.

3. Each Party shall provide that for data referred to in paragraph 2 that is submitted to the Party after the date of entry into force of this Agreement, no other applicant for marketing approval may, without permission of the person that submitted the data, rely on that data in support of an application for marketing approval during a reasonable period, which shall normally mean not less than five years from the date on which the Party granted approval to the

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which paediatric studies have been carried out, where the results of those studies are reflected person that produced the data for approval to market its product.

## **SUB-SECTION 7**

## **PLANT VARIETIES RIGHTS**

### **ARTICLE 12.42**

#### **Plant Varieties Rights**

The Parties shall protect plant varieties rights in accordance with the *International Convention for the Protection of New Varieties of Plants*, adopted in Paris on 2 December 1961, as last revised in Geneva on 19 March 1991, including the exceptions to the breeder's right as referred to in Article 15 of that Convention, and cooperate to promote and enforce these rights.

### **SECTION C**

## **ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

### **SUB-SECTION 1**

#### **GENERAL ENFORCEMENT PROVISIONS**

### **ARTICLE 12.43**

#### **General Obligations**

1. The Parties affirm their rights and obligations under the TRIPS Agreement, in particular Part III thereof. Each Party shall provide for the complementary measures, procedures and remedies under this Section

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in the product information.

necessary to ensure the enforcement of intellectual property rights.<sup>1</sup> Those measures, procedures and remedies shall be fair and equitable, and shall not be

unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

2. The measures, procedures and remedies referred to in paragraph 1 shall be effective and proportionate and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

## **ARTICLE 12.44**

### **Entitled Applicants**

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

- (a) the holders of intellectual property rights in accordance with the provisions of the applicable law;
- (b) all other persons authorised to use those intellectual property rights, in particular licensees, in so far as permitted by, and in accordance with the provisions of the applicable law;
- (c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, the provisions of the applicable law; and
- (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, the provisions of the applicable law.

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<sup>1</sup> For the purposes of this Sub-Section, the term "intellectual property rights" should include at least the following rights: copyright; rights related to copyright; rights of the creator of the topographies of a semi-conductor product; trademark rights; design rights; patent rights;

geographical indications; utility model rights; plant variety rights; trade names in so far as they are protected as intellectual property rights in the domestic law concerned.

## **SUB-SECTION 2**

### **CIVIL ENFORCEMENT**

#### **ARTICLE 12.45**

##### **Provisional Measures**

1. Each Party shall ensure that its competent judicial authorities, upon request by a party who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, have the authority to order prompt and effective provisional measures to:

(a) prevent an infringement of any intellectual property right from occurring, and, in particular, to prevent the entry into, and the movement within, the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance:

(i) an interlocutory injunction may be issued against a party whose services are being used by a third party to infringe an intellectual property right and over whom the relevant judicial authority exercises jurisdiction; and

(ii) in the case of an alleged infringement that is committed on a commercial scale, the Parties shall ensure that, if the applicant referred to in Article 12.44 (Entitled Applicants) demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure or blocking of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets;

and

(b) preserve relevant evidence in respect of the alleged infringement, subject to

the protection of confidential information, which may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods and, in appropriate cases, the materials and implements used in the production or distribution of these goods, and the documents relating thereto.

2. Where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed, the judicial authorities shall have the authority to adopt the provisional measures referred to in paragraph 1 without the other party being heard.
3. This Article is without prejudice to Article 50 of the TRIPS Agreement.

## **ARTICLE 12.46**

### **Evidence**

1. Each Party shall ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims and which has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be presented by the opposing party, subject to the protection of confidential information. For the purposes of this paragraph, a Party may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence.
2. In the case of an infringement committed on a commercial scale each Party shall take such measures as are necessary to enable the competent judicial authorities to order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

## **ARTICLE 12.47**

### **Right of Information**

1. Without prejudice to its domestic law governing the protection of confidentiality of information or processing of personal data, each Party shall ensure that, in civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the applicant, the competent judicial authorities may order the infringer, the alleged infringer or any other person to provide information, as provided for in its domestic laws and regulations, that the person concerned possesses or controls.

For the purposes of this paragraph, the term "any other person" may include a person who was:

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

2. The information referred to in paragraph 1 may include information regarding any person involved on a commercial scale in the infringement or alleged infringement, and regarding the means of production and distribution networks of the infringing goods or services.

## **ARTICLE 12.48**

### **Other Remedies**



1. Each Party shall ensure that the competent judicial authorities shall have the authority to order, upon request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort in such a manner as to minimise the risks of further infringements:

(a) the recall from the channels of commerce;<sup>1</sup>

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<sup>1</sup> Each Party shall ensure that this provision applies to infringing goods found in the channels of commerce and that infringers should be ordered to at least recall the goods from their

(b) the disposal outside the channels of commerce; or

(c) the destruction,

of goods that they have found to be infringing an intellectual property right. The competent judicial authorities may also order destruction of materials and implements, the predominant use of which has been in the creation or manufacture of the infringing goods, or their disposal outside the channels of commerce in such a manner as to minimise the risks of further infringements.

2. The competent judicial authorities shall have the authority to order that the remedies referred to in paragraph 1, at least for the destruction, including the removal from the channels of commerce for destruction, be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

## **ARTICLE 12.49**

### **Injunctions**

Each Party shall ensure that, when a judicial decision finds an infringement of an intellectual property right, the competent judicial authorities may issue against the infringer and, where appropriate, against a party whose services are being used by the infringer and over whom the judicial authority exercises

jurisdiction, an injunction aimed at prohibiting the continuation of the infringement.

## **ARTICLE 12.50**

### **Alternative Measures**

A Party may provide that, in appropriate cases and upon request of the person liable to be subject to the measures provided for in Article 12.48 (Other Remedies) or Article 12.49 (Injunctions), the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of

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customers, such as wholesalers, distributors, retailers.

applying the measures provided for in Article 12.48 (Other Remedies) and Article 12.49 (Injunctions) if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

## **ARTICLE 12.51**

### **Damages**

1. Each Party shall ensure that the competent judicial authorities have the authority to order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages to compensate for the actual injury the right holder has suffered as a result of the infringement.

In determining the amount of damages for infringement of intellectual property rights, the competent judicial authorities shall have the authority to:

- (a) take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered,

any unfair profits made by the infringer<sup>1</sup> and, in appropriate cases, elements other than economic factors<sup>2</sup>; and

(b) in appropriate cases, set the damages as a lump sum on the basis of elements such as, at least, the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not engage, knowingly or with reasonable grounds to know, in infringing activity, a Party may provide that the competent judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established.

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<sup>1</sup> The calculation of unfair profits made by the infringer shall not be duplicated in calculating lost profits.

<sup>2</sup> The term "elements other than economic factors" shall include moral prejudice caused by the infringement of moral rights of inventors or authors.

## **ARTICLE 12.52**

### **Legal Costs**

Each Party shall provide that the competent judicial authorities, as a general rule and, where appropriate, have the authority to order 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 domestic law.

## **ARTICLE 12.53**

### **Publication of Judicial Decisions**

The competent judicial authorities shall have the authority to order, pursuant to its domestic law and policies, the publishing or making available to the public, at the expense of the infringer, appropriate information concerning the final judicial decision.

## **ARTICLE 12.54**

### **Presumption of Authorship or Ownership**

The Parties recognise that, for the purposes of applying the measures, procedures and remedies provided for in this Chapter, it is sufficient for the name of an author of a literary or artistic work, and for the name of other right holders with regard to their protected subject-matter, to appear on the work or protected subject-matter in the usual manner in order for that author or other right holder to be regarded as such, unless there is proof to the contrary, and consequently to be entitled to institute infringement proceedings.

## **SUB-SECTION 3**

### **INTERMEDIARY SERVICE PROVIDERS**

## **ARTICLE 12.55**

### **Liability of Intermediary Service Providers**

1. Each Party shall, in accordance with this Article, provide for limitations or exemptions in its domestic legislation regarding the liability of intermediary service providers, in relation to the provision or use of their services, for infringements of copyright or related rights that take place on or through telecommunication networks<sup>1</sup>.
2. The limitations or exemptions referred to in paragraph 1 shall cover at least the following activities:
  - (a) the transmission in a telecommunication network of information provided by a user of the service, or the provision of access to a telecommunication network ("mere conduit");
  - (b) the transmission in a telecommunication network of information provided by a user of the service concerning the automatic, intermediate and

temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other users of the service upon their request ("caching"), on condition that the provider:

- (i) does not modify the information other than for technical reasons;
- (ii) complies with conditions on access to the information;
- (iii) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- (iv) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and

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<sup>1</sup> For greater certainty, this includes the Internet.

- (v) removes or disables access to the information it has stored upon obtaining knowledge<sup>1</sup> of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled;

and

- (c) the storage of information provided by a user of the service at the request of a user of the service ("hosting") on condition that the provider:
  - (i) does not have the knowledge of illegal information; and
  - (ii) upon obtaining such knowledge<sup>2</sup>, acts expeditiously to remove or to disable access to the information concerned.

3. Each Party may in its domestic law provide for conditions under which intermediary service providers do not qualify for the limitations or exceptions set out in paragraph 2.

4. The eligibility conditions for intermediary service providers to qualify for the limitations or exceptions in paragraph 2 shall not include the intermediary

service provider monitoring its service, or seeking facts indicating infringing activity.

5. Each Party may establish procedures for effective notifications of claimed infringement, and effective counter-notifications.

6. This Article shall not affect the possibility for a court or administrative authority, in accordance with each Party's legal system, to require the intermediary service provider to terminate or prevent an infringement.

<sup>1</sup> Nothing in this Chapter precludes either Party from defining in its domestic law conditions for determining how the knowledge of illegal information being hosted is obtained.

<sup>2</sup> Nothing in this Chapter precludes either Party from defining in its domestic law conditions for determining how the knowledge of illegal information being hosted is obtained.

#### **SUB-SECTION 4**

### **BORDER ENFORCEMENT**

#### **ARTICLE 12.56**

##### **Consistency with GATT 1994 and the TRIPS Agreement**

In implementing border measures for the enforcement of intellectual property rights by customs authorities, as set out in this Sub-Section, the Parties shall ensure consistency with their obligations under GATT 1994 and the TRIPS Agreement and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.

## **ARTICLE 12.57**

### **Definitions**

For the purposes of this Sub-Section:

- (a) "counterfeit goods" means counterfeit trademark goods and counterfeit geographical indication goods;
- (b) "counterfeit geographical indication goods" means goods, including packaging, unlawfully bearing a geographical indication identical with the geographical indication validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a geographical indication, and the importation of which thereby infringes or the exportation of which would have constituted an infringement of the rights of the geographical indication in question according to the law of the Party where the goods are found;
- (c) "counterfeit trademark goods" means goods, including packaging, bearing without authorisation a trademark which is identical with the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and the importation of which thereby infringes or the exportation of which would have constituted an infringement of the rights of the owner of the trademark in question according to the law of the Party where the goods are found;
- (d) "export goods" means goods which are to be taken from the territory of a Party to a place outside that territory, while those goods remain under customs control;
- (e) "goods infringing an intellectual property right" means counterfeit goods and pirated copyright goods the importation or exportation of which, according to the law of the Party where the goods are found, infringe an intellectual property right;
- (f) "import goods" means goods brought into the territory of a Party from a

place outside that territory, while those goods remain under customs control; and

- (g) "pirated copyright goods" means goods which are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy, as well as importation or exportation, would have constituted an infringement of a copyright or a related right under the law of the Party of importation or exportation, respectively.

## **ARTICLE 12.58**

### **Scope of Border Measures**

1. With respect to import and export goods, each Party shall adopt or maintain procedures under which a right holder can submit applications requesting customs authorities to suspend the import or export of goods suspected of infringing intellectual property rights.
2. The customs authorities shall, in accordance with domestic procedures, suspend the release of the goods suspected of infringing an intellectual property right.

## **ARTICLE 12.59**

### **Active Involvement of Customs Authorities**

The customs authorities shall, on the basis of risk analysis techniques, be active in targeting and identifying shipments containing import and export goods suspected of infringing intellectual property rights. They shall cooperate with right holders, including allowing the provision of information for risk analysis.

## **ARTICLE 12.60**



## **Specific Cooperation in the Area of Border Measures**

1. Without prejudice to subparagraph 2(a) of Article 4.2 (Customs Cooperation and Mutual Administrative Assistance), the Parties shall, where appropriate, promote cooperation and exchange of information and best practices between their customs authorities to enable effective border controls for the purposes of enforcement of intellectual property rights, particularly in order to effectively implement Article 69 of the TRIPS Agreement.
2. With regard to the customs enforcement of intellectual property rights the customs authorities of the Parties shall provide each other with mutual administrative assistance in accordance with Protocol 2 (On Mutual Administrative Assistance in Customs Matters).
3. Without prejudice to Article 17.1 (Trade Committee), the Committee on Customs referred to in Article 17.2 (Specialised Committees), shall be responsible for ensuring the proper functioning and implementation of this Article. The Committee on Customs shall set the priorities and provide for the adequate procedures for cooperation between the competent authorities.

### **SUB-SECTION 5**

## **OTHER PROVISIONS RELATING TO ENFORCEMENT**

### **ARTICLE 12.61**

#### **Codes of Conduct**

The Parties shall encourage:

- (a) the development, by trade or professional associations or organisations, of codes of conduct aimed at contributing towards the enforcement of intellectual property rights; and
- (b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of those codes of

conduct.

**SECTION D**  
**COOPERATION AND INSTITUTIONAL PROVISIONS**

**ARTICLE 12.62**

**Cooperation**

1. The Parties shall cooperate with a view to supporting the implementation of this Chapter.
2. Subject to Chapter 16 (Cooperation and Capacity Building), areas of cooperation include, but are not limited to, the following activities:
  - (a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement as well as exchange of experiences between the Union and Viet Nam on legislative progress;
  - (b) exchange of experiences and information between the Union and Viet Nam on enforcement of intellectual property rights;
  - (c) exchange of experiences between the Union and Viet Nam on enforcement at central and sub-central levels by customs, police, administrative and judiciary bodies as well as coordination of their actions to prevent exports of counterfeit goods, including with other countries;
  - (d) capacity building, and exchange and training of personnel;
  - (e) promotion and dissemination of information on intellectual property rights in, *inter alia*, business circles, socio-professional and social organisations as well as promotion of public awareness of consumers and right holders;

- (f) enhancement of intergovernmental cooperation between, *inter alia*, intellectual property offices; and
  - (g) active promotion of awareness and education of the general public on intellectual property rights policies by formulating effective strategies to identify key audiences and creating communication programmes to increase consumer and media awareness on the impact of intellectual property violations, including the risk to health and safety and the connection to organised crime.
3. Without prejudice to paragraphs 1 and 2, the Parties agree to address, as necessary, topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and also any other relevant issue in the Working Group on Intellectual Property Rights, including Geographical Indications, established pursuant to Article 17.3 (Working Groups).

## **ARTICLE 12.63**

### **Working Group on Intellectual Property Rights, including Geographical Indications**

1. The Working Group on Intellectual Property Rights, including Geographical Indications, established pursuant to Article 17.3 (Working Groups), shall consist of representatives of the Parties for the purposes of monitoring the implementation of this Chapter, intensifying their cooperation and holding dialogues on intellectual property rights, including geographical indications.
2. The Working Group on Intellectual Property Rights, including Geographical Indications may consider any matter related to the implementation and operation of this Chapter. In particular, it shall be responsible for:
  - (a) preparing a recommendation for the Parties to amend Annex 12-A (List of Geographical Indications) as regards geographical indications in accordance with Article 12.26 (Amendment of the List of Geographical

Indications);

- (b) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications; and
- (c) exchanging information on geographical indications for the purposes of considering their protection in accordance with Sub-Section 3 (Geographical Indications) of Section B (Standards Concerning Intellectual Property Rights) of this Chapter.

## **CHAPTER 13**

### **TRADE AND SUSTAINABLE DEVELOPMENT**

#### **ARTICLE 13.1**

##### **Objectives**

1. The objective of this Chapter is to promote sustainable development, notably by fostering the contribution of trade and investment related aspects of labour and environmental issues.
2. The Parties recall the *Agenda 21 on Environment and Development* of 1992, the *Johannesburg Plan of Implementation of the World Summit on Sustainable Development* of 2002, the *Ministerial Declaration of the United Nations Economic and Social Council on Full Employment and Decent Work* of 2006, the *International Labour Organization* (hereinafter referred to as "ILO") *Decent Work Agenda*, the *Outcome Document of the United Nations Conference on Sustainable Development* of 2012, entitled *The future we want*, and the *Outcome Document of the United Nations Summit on Sustainable Development* of 2015, entitled *Transforming Our World: the 2030 Agenda for Sustainable Development*. They affirm their commitment to promote the development of international trade in such a way as to contribute to the

objective of sustainable development, for the welfare of present and future generations. The objective of sustainable development shall be integrated in their bilateral trade relationship.

3. The Parties affirm their commitment to pursue sustainable development, which consists of economic development, social development and environmental protection all three being inter-dependent and mutually reinforcing.

4. The Parties underline the benefits of cooperating on trade-related labour<sup>1</sup> and environmental issues as part of the global approach to trade and sustainable development.

5. This Chapter embodies a cooperative approach based on common values and interests, taking into account the differences in the Parties' respective levels of development.

## **ARTICLE 13.2**

### **Right to Regulate and Levels of Protection**

1. The Parties recognise their respective right to:
  - (a) determine its sustainable development objectives, strategies, policies and priorities;

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<sup>1</sup> For the purposes of this Chapter, "labour issues" means those under the Decent Work Agenda, as referred to in the *ILO Declaration on Social Justice for a Fair Globalization*, adopted by the International Labour Conference at its 97th Session in Geneva on 10 June 2008.

- (b) establish its own levels of domestic protection in the environmental and social areas as it deems appropriate; and
  - (c) adopt or modify accordingly its relevant laws and policies in a manner consistent with the internationally recognised standards, and the agreements, to which a Party is a party, referred to in Articles 13.4

(Multilateral Labour Standards and Agreements) and 13.5 (Multilateral Environmental Agreements).

2. Each Party shall endeavour to ensure that its laws and policies provide for and encourage high levels of domestic protection in the environmental and social areas and shall continuously endeavour to improve those laws and policies.

### **ARTICLE 13.3**

#### **Upholding Levels of Protection**

1. The Parties stress that weakening the levels of protection in environmental or labour areas is detrimental to the objectives of this Chapter and that it is inappropriate to encourage trade and investment by weakening the levels of protection afforded in domestic environmental or labour law.

2. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour laws, in a manner affecting trade and investment between the Parties.

3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental and labour laws, as an encouragement for trade and investment.

4. A Party shall not apply environmental and labour laws in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

### **ARTICLE 13.4**

#### **Multilateral Labour Standards and Agreements**

1. The Parties recognise the importance of full and productive employment and decent work for all, in particular as a response to globalisation. The Parties reaffirm their commitment to promote the development of their bilateral trade in a way that is conducive to full and productive employment

and decent work for all, including for women and young people. In this context, the Parties shall consult and cooperate, as appropriate, on trade-related labour issues of mutual interest.

2. Each Party reaffirms its commitments, in accordance with its obligations under the ILO and the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted by the International Labour Conference at its 86th Session in 1998, to respect, promote and effectively implement the principles concerning the fundamental rights at work, namely:

- (a) the freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

3. Each Party shall:

- (a) make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions;
- (b) consider the ratification of other conventions that are classified as up to date by the ILO, taking into account its domestic circumstances; and
- (c) exchange information with the other Party with regard to the ratifications mentioned in subparagraphs (a) and (b).

4. Each Party reaffirms its commitment to effectively implement in its domestic laws and regulations and practice the ILO conventions ratified by Viet Nam and the Member States of the Union, respectively.

5. The Parties recognise that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

## **ARTICLE 13.5**

### **Multilateral Environmental Agreements**

1. The Parties recognise the value of multilateral environmental governance and agreements as a response of the international community to environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment. The Parties shall consult and cooperate, as appropriate, with respect to trade-related environmental issues of mutual interest.
2. Each Party reaffirms its commitment to effectively implement in its domestic law and practice the multilateral environmental agreements to which it is a party.
3. The Parties shall exchange in the Committee on Trade and Sustainable Development and, as appropriate, on other occasions, information and experiences on their respective situation and progress with regard to the ratification of multilateral environmental agreements or their amendments.
4. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures to implement the multilateral environmental agreements to which it is a party, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.