

I.

Intellectual Property Rights

CETA – DRAFT IPR CHAPTER

Article 1 Objectives
The objectives of this chapter are to: (a) facilitate the production and commercialization of innovative and creative products, and the provision of services, between the Parties; and (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.
Article X Definitions
For the purposes of this Chapter, “pharmaceutical product” means a product including a chemical drug, biologic drug, vaccine or radiopharmaceutical, which is manufactured, sold or represented for use in: (a) making a medical diagnosis, treating, mitigating or preventing disease, disorder, or abnormal physical state, or its symptoms, or (b) restoring, correcting or modifying physiological functions.
Sub-Section 1 Principles
Article 2 Nature and Scope of Obligations
The provisions of this chapter complement the rights and obligations between the Parties under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter called TRIPS Agreement). Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice. Nothing in this Agreement creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.
Article 3 Public Health Concerns
1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration. 2. The Parties shall contribute to the implementation and respect the Decision of the WTO General

Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.
[CA: Article 4 Exhaustion Nothing in this Chapter shall affect the freedom of the Parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.]
<i>Sub-Section 2</i> Standards Concerning Intellectual Property Rights
Article 5 Copyright and Related Rights
Article 5.1 – Protection Granted 1. The Parties shall comply with the Berne Convention for the Protection of Literary and Artistic Works (1886, last amended in 1979), the WIPO Copyright Treaty – WCT (Geneva, 1996), and the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996). The Parties shall comply with Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961). 2. The moral rights of the authors [EU: and performers] [CA: for performances fixed in phonograms] shall be protected in accordance with Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works and Article 5 of the WIPO Performances and Phonograms Treaty (WPPT). [EU: x.In this agreement, references to "performers" are without prejudice to international treaties and to national legislation on the definition of this term.] 3. The Parties shall confine limitations or exceptions to 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 holder. 4. Notwithstanding paragraph 3, with respect to related rights, the Parties may provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention.
Article 5.8 – Broadcasting and Communication to the Public 1. The Parties shall provide performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation. 2. The Parties shall ensure that a single equitable remuneration is paid by the user 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, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. The Parties 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.

[CA: Article 5.13 - Protection of Technological Measures]

5.13(1) Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures⁴¹ that are used by authors, performers [CA: of performances fixed in phonograms,] or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances [CA: fixed in phonograms], and phonograms, which are not authorized by the authors, the performers [CA: of performances fixed in phonograms,] or the producers of phonograms concerned or permitted by law.

5.13(2) In order to provide the adequate legal protection and effective legal remedies

referred to in paragraph 5.13(1), each Party shall provide protection at least against:

(a) to the extent provided by its law:

(i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and

(ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and

(b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:

(i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or

(ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.

5.13(3) In implementing paragraphs 5.13(1) and (2), 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 contravene its measures implementing these paragraphs.

5.13(4) In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraph 5.13(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5.13(1) and (2). The obligations set forth in paragraphs 5.13(1) and (2) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.]

⁴¹ For the purposes of this Article, **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, [CA: performers'] performances [CA: fixed in phonograms], or phonograms, which are not authorized by authors, performers [CA: of performances fixed in phonograms,] or producers of phonograms, as provided for by a Party's law. Without prejudice to the scope of copyright or related rights contained in a Party's law, technological measures shall be deemed effective where the use of protected works, performances [CA: fixed in phonograms], or phonograms is controlled by authors, performers [CA: of performances fixed in phonograms,] or producers of phonograms through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection.

[CA: Article 5.14 - Protection of Rights Management Information]

5.14(1) To protect electronic rights management information,⁴² each Party shall provide adequate legal protection and effective legal [CA: civil] remedies against any person knowingly performing without authority any of the following acts knowing, or [CA: ~~with respect to civil remedies,~~] having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights:

- (a) to remove or alter any electronic rights management information;
- (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, [CA: performers'] performances [CA: fixed in phonograms], or phonograms, knowing that electronic rights management information has been removed or altered without authority.

5.14(2) In providing adequate legal protection and effective legal [CA: civil] remedies pursuant to the provisions of paragraph 5.14(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraph 5.14(1). The obligations set forth in paragraph 5.14(1) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.]

[CA: Article 5.16 - Liability of Intermediary Service Providers]

5.16(1) Each Party's enforcement procedures shall apply to infringement of copyright or related rights over digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy. [CA: For instance, without prejudice to a Party's law, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers, while preserving the legitimate interests of right holders, would be permitted].

5.16(2) Each Party shall endeavour to promote cooperative efforts within the business community to effectively address trademark and copyright or related rights infringement while preserving legitimate competition and, consistent with that Party's law, preserving fundamental principles such as freedom of expression, fair process, and privacy.

5.16(3) A Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right

⁴² For the purposes of this Article, **rights management information** means:

- (a) information that identifies the work, the [CA: performer's] performance [CA: fixed in a phonogram], or the phonogram; the author of the work, the performer of the performance [CA: fixed in a phonogram], or the producer of the phonogram; or the owner of any right in the work, [CA: performer's] performance [CA: fixed in a phonogram], or phonogram;
 - (b) information about the terms and conditions of use of the work, [CA: performer's] performance [CA: fixed in a phonogram], or phonogram; or
 - (c) any numbers or codes that represent the information described in (a) and (b) above;
- when any of these items of information is attached to a copy of a work, [CA: performer's] performance [CA: fixed in a phonogram], or phonogram, or appears in connection with the communication or making available of a work, [CA: performer's] performance [CA: fixed in a phonogram], or phonogram to the public.

holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights.

These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.]

**Article 6
Trademarks**

Article 6.1 – International Agreements

The Parties shall make all reasonable efforts to comply with the Singapore Treaty on the Law of Trademarks (2006) and to accede to *the Protocol related to the Madrid Agreement concerning the International Registration of Marks*.

Article 6.2 – Registration Procedure

The Parties shall provide for a system for the registration of trademarks in which reasons for the refusal to register a trademark shall be communicated in writing to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal to a judicial authority. The Parties shall provide for the possibility to file oppositions either against trademark applications or against trademark registrations. The Parties shall provide a publicly available electronic database of trademark applications and trademark registrations.

Article 6.3 – Exceptions to the Rights Conferred by a Trademark

The Parties shall provide for the fair use of descriptive terms, including terms descriptive of geographical origin, as a limited exception to the rights conferred by a trademark. In determining what is fair use, account shall be taken of the legitimate interests of the owner of the trademark and of third parties. The Parties may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

**Article 8
Designs**

Article 8.1 - International Agreements

The Parties shall make all reasonable efforts to accede to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (1999).

[EU: Article 8.2 - Relationship to Copyright

The subject matter of a design right may be protected under copyright law if the conditions for such protection are met. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.]

**Article 9
Patents**

Article 9.1 - International Agreements

The Parties shall make all reasonable efforts to comply with the Patent Law Treaty (Geneva, 2000).

[EU: Article 9.2 – Patent term restoration

1. The Parties recognise that pharmaceutical and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.

2. The Parties shall provide for a further period of protection for a pharmaceutical or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in paragraph 1 second sentence above, reduced by five years.

3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed five years.

4. A pharmaceutical product for which paediatric studies have been carried out may be entitled to a six months extension of the period mentioned in paragraphs 2 and 3.]

[CA: Article 9.3 - Public Disclosure

Each Party shall provide a 12-month grace period for patent applications without any formal requirements such as a declaration of disclosures made.]

Article 10

Protection of undisclosed Data relating to Pharmaceutical Products

[EU: Pharmaceutical product” means a product containing an entity, including a chemical drug, biologic drug, vaccine or radiopharmaceutical, which is manufactured, sold or represented for use in

(a) making a medical diagnosis, treating, mitigating or preventing disease, disorder, or abnormal physical state, or its symptoms, or

(b) restoring, correcting or modifying physiological functions.]

1. The Parties shall guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a pharmaceutical product on the market.

[EU: 2. For that purpose, the Parties shall ensure in their respective legislation that any information submitted to obtain an authorisation to put a pharmaceutical product on the market will remain undisclosed to third parties and benefit from protection against unfair commercial use.

(a) During a period of at least eight years, starting from the date of grant of marketing approval in the Party concerned, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, will, without the explicit consent of the person or entity who submitted this data, rely directly or indirectly on such data in support of an application for the authorisation to put a pharmaceutical product on the market;

(b) during a ten-year period, starting from the date of grant of marketing approval in the Party concerned, a marketing authorization granted for a subsequent application will not permit placing a pharmaceutical product on the market, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant.

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Products registered without submission of such data would be removed from the market until the requirements were met.] [EU: 3. In addition, the ten-year period referred to shall be extended to a maximum of eleven years if, during the first eight years after obtaining the authorisation in either of the Parties, the holder of the basic authorisation obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.] [CA: 3. The Parties recognize the value of providing added incentives for development of paediatric applications. To this end, the Parties may provide added patent protection or data protection for such applications.]
[EU: Article 10 bis Patent linkage mechanisms]
[EU: If a Party relies on "patent linkage" mechanisms whereby the granting of marketing authorizations (or notices of compliance or similar concepts) for generic pharmaceutical products is linked to the existence of patent protection, it shall ensure that the patent holders and the manufacturers of generic medicines are treated in a fair and equitable way, including regarding their respective rights of appeal.]
[CA: Article X-1 Trade Secrets]
1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as: (a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question; (b) the information has actual or potential commercial value because it is secret; and (c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret. 2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments. 3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist. 4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the trade secrets.]
[CA: Article X-2 Data protection]
1. If a Party requires, as a condition for approving the marketing of pharmaceutical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the

data of persons making such submissions, where the origination of such data involves considerable effort, [EU: with a possible exception] [CA: except] where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

2. Each Party shall provide that for data subject to paragraph 1 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a period of not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

3. Where a Party relies on a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.]

Article 11 Data Protection on Plant Protection Products

1. The Parties shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.

2. The Parties shall recognise a temporary right to the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product.

During such period, the test or study report will not be used for the benefit of any other person aiming to achieve a marketing authorisation for plant protection product, except when the explicit consent of the first owner is proved. This right will be hereinafter referred as data protection.

[EU: 3. The test or study report should fulfil the following conditions:

- (a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops, and
- (b) be compliant with the principles of good laboratory practice or of good experimental practice.]

[CA: 3. The test or study report should be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops.]

4. The period of data protection shall be at least ten years starting at the date of the first authorisation in that Party with respect to data supporting the authorisation of a new active ingredient and data supporting the concurrent registration of the end-use product containing the active ingredient. The duration of protection may be extended in order to encourage the authorisation of low-risk plant protection products and minor uses.

5. The Parties may also establish data protection requirements or financial compensation requirements for data supporting the amendment or renewal of an authorisation.

6. Each of the Parties [CA: may] [EU: shall] establish rules to avoid duplicative testing on vertebrate animals. Any applicant intending to perform tests and studies involving vertebrate animals should be encouraged to take the necessary measures to verify that those tests and studies have not already been performed or initiated.

7. The new applicant and the holder or holders of the relevant authorisations [EU: shall] [CA:

should] be encouraged to make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. The prospective applicant is only required to share in the costs of information he is required to submit to meet the authorisation requirements.

8. The holder or holders of the relevant authorisation shall have a claim on the prospective applicant for a fair share of the costs incurred by him. The Party may direct the parties involved to resolve the matter by formal and binding arbitration administered under national law.

[CA: Article 11:

1. Each Party shall determine safety and efficacy requirements in respect of plant protection products on the basis of tests or study reports before authorizing the placing on the market of plant protection products for the first time, for renewal of such an authorization, or for an amendment.

2. Each Party shall provide a period of exclusive use protection for test data or data in a study report that supports the first authorization in that Party of a new active ingredient and data supporting the concurrent authorization of end-use products containing that active ingredient. The period of such protection shall be at least ten years starting with the date of that authorization and may be subject to extension in order to encourage the authorization of low-risk plant protection products and minor uses. During the period of protection the data shall not be used for the benefit of any other person applying to obtain a marketing authorization for a plant protection product or for the renewal or amendment of such an authorization, except when the explicit consent of the owner is proved.

3. Each Party may also establish data protection requirements or financial compensation requirements for data supporting an authorization or the renewal or amendment of an authorization when the data is provided in circumstances in which it does not qualify for exclusive use protection.

4. Each Party shall encourage the holders of existing authorizations that are subject to protection in accordance with paragraph 2 or 3 to make every effort to share test data and data in study reports involving vertebrate animals, with prospective applicants for authorizations or renewal or amendment of authorizations, in order to avoid duplicative testing.

5. Where a prospective applicant for authorization or renewal or amendment of an authorization is required by the data protection requirements to compensate the data owner for the right to use data, the Party shall ensure that the amount of such compensation is determined in a fair, transparent and non-discriminatory way, and that the prospective applicants are only required to compensate the owners for the use of data that they are required to submit to meet the Party's authorization requirements.

6. Each Party shall ensure that the owners of test data or data in study reports will have a claim on a prospective applicant with whom they shared data during the relevant protection period for a fair share of the cost incurred by the owner in relation to such data. Each Party may direct such private parties to resolve the matter of compensation by a formal and binding arbitration administered under national law.]

Article 12 Plant Varieties

The Parties shall co-operate to promote and reinforce the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (UPOV).

Sub-Section 3 Enforcement of Intellectual Property Rights
Article 13 General Obligations
1. The Parties shall ensure that any procedures for the enforcement of intellectual property rights are fair and equitable, and are not unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays. 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 abuse. 2. In implementing the provisions of this Sub-Section, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties. 3. Articles 14 to 23 relate to civil enforcement. 4. For the purposes of Articles 14 to 23, unless otherwise mentioned, "intellectual property rights" means all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights.
Article 14 Entitled Applicants
The Parties shall recognise as persons entitled to seek application of the procedures and remedies referred to in Articles 15 to 23: (a) the holders of intellectual property rights in accordance with the provisions of the applicable domestic law, (b) all other persons authorised to use those rights, if such persons are entitled to seek relief in accordance with the provisions of the applicable domestic law, (c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, if such bodies are entitled to seek relief in accordance with the provisions of the applicable domestic law, (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, if such bodies are entitled to seek relief in accordance with the provisions of the applicable domestic law.
Article 15 Evidence
Each Party shall ensure that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities shall have the authority to order, where appropriate and following an application, the production of relevant information, as provided for in the Party's domestic law, including banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.
Article 16 Measures for Preserving Evidence
1. The Parties shall ensure that, even before the commencement of proceedings on the merits of the

case, the judicial authorities may, on application by an entity who has presented reasonably available evidence to support its claims that its intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. Each Party may provide that such measures 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 and/or distribution of these goods and the documents relating thereto. The judicial authorities shall have the authority to take those measures, if necessary without the other party being heard, 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.

Article 17

Right of Information

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

Article 18

Provisional and Precautionary Measures

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional and precautionary measures, including an interlocutory injunction, against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of an intellectual property right from occurring, and in particular, to prevent infringing goods from entering the channels of commerce.

2. Each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. Each Party shall provide that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities may order, in accordance with domestic law, the precautionary seizure of property of the alleged infringer, including the blocking of its bank accounts and other assets. To that end, the judicial authorities may order the communication of relevant bank, financial or commercial documents, or access to other relevant information, as appropriate.

Article 19

Other remedies

1. The Parties shall ensure that the judicial authorities may order, at the 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, the definitive removal from the channels of commerce, or the destruction,

of goods that they have found to be infringing an intellectual property right. The Parties shall ensure that the judicial authorities may order, if appropriate, destruction of materials and implements predominantly used in the creation or manufacture of those goods. In considering a request for such remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account. 2. The Parties shall ensure that the judicial authorities have the authority to order that those remedies shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.
Article 20 Injunctions
1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to issue an order against a party to desist from an infringement, and <i>inter alia</i>, an order to that party, or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent infringing goods from entering into the channels of commerce. 2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by government, or by third parties authorized by government, without the use of authorization of the right holders to the payment of remuneration provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.
Article 21 Damages
1. Each Party shall provide that: (a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of intellectual property rights to pay the right holder: (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or (ii) the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in paragraph (i); (b) in determining the amount of damages for infringements of intellectual property rights, its judicial authorities may consider, <i>inter alia</i>, any legitimate measure of value that may be submitted by the right holder, including lost profits. [CA: 2. For greater certainty, a Party may limit or exclude damages in certain special cases.] [EU: 2. These provisions are without prejudice to a Party's legislation providing for limitations of damages in certain exceptional situations, provided that they preserve the legitimate interests of the right holders.]
Article 22 Legal Costs

Each Party shall provide that its judicial authorities, where appropriate, shall have the authority to order, at the conclusion of civil judicial proceedings concerning the enforcement of intellectual property rights, that the prevailing party be awarded payment by the losing party of legal costs and other expenses, as provided for under that Party's law.

Article 23
Presumption of Authorship or Ownership

For the purposes of civil proceedings involving copyright or related rights,

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner. Proof to the contrary may include registration;
- (b) the provisions under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

[EU: Article 24
Criminal enforcement^{43 44}

ARTICLE 24.1: CRIMINAL OFFENCES

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale.⁴⁵

Such wilful trademark counterfeiting includes cases where distributors or retailers selling counterfeit products openly indicate that they are counterfeit.

For the purposes of this Article, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage.

2. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation⁴⁶ and domestic use, in the course of trade and on a commercial scale, of labels or

⁴³ The issue of the scope is still under examination by the Member States of the European Union.

⁴⁴ “*counterfeit trademark goods*” means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country in which the procedures set forth in Sub-Section 3 (Enforcement of Intellectual Property Rights) are invoked; “*pirated copyright goods*” means any goods which are copies made without the consent of the right holder or person duly authorized 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 would have constituted an infringement of a copyright or a related right under the law of the country in which the procedures set forth in Sub-Section 3 (Enforcement of Intellectual Property Rights) are invoked.

⁴⁵ Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to importation and exportation of counterfeit trademark goods or pirated copyright goods by providing for distribution, sale or offer for sale of such goods on a commercial scale as unlawful activities subject to criminal penalties.

packaging⁴⁷:

- (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.

[CA: Article 24.1.X – Camcording]

Each Party shall provide for criminal procedures and penalties to be applied in accordance with its laws and regulations against any person who, without authorization of the theatre manager or the holder of copyright in a cinematographic work, makes a copy of that work or any part thereof, from a performance of the work in a motion picture exhibition facility open to the public.]

3. With respect to the offences specified in this Article for which a Party provides criminal procedures and penalties, that Party shall ensure that criminal liability for aiding and abetting is available under its law.

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

ARTICLE 24.2: PENALTIES

For offences specified in paragraphs 1, 2 [CA: insertion of camcording paragraph number from above TBD] and 3 of Article 24.1 (Criminal Offences), each Party shall provide penalties that include imprisonment as well as monetary fines⁴⁸ sufficiently high to provide a deterrent to future acts of infringement, consistently with the level of penalties applied for crimes of a corresponding gravity.

ARTICLE 24.3: SEIZURE, FORFEITURE AND DESTRUCTION

1. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence, and the assets derived from, or obtained directly or indirectly through the alleged infringing activity.

2. Where a Party requires the identification of items subject to seizure as a prerequisite for issuing an order referred to in paragraph 1, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.

3. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of all counterfeit trademark goods or pirated copyright goods. In cases where counterfeit trademark goods and pirated copyright goods are not destroyed, the competent authorities shall ensure that, except in exceptional circumstances, such goods

⁴⁶ A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

⁴⁷ 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.

⁴⁸ 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.

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 ensure that the forfeiture or destruction of such goods shall occur without compensation of any sort to the infringer.

4. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and, at least for serious offences, of the assets derived from, or obtained directly or indirectly, through the infringing activity. Each Party shall ensure that the forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any sort to the infringer.

5. With respect to the offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties, that Party may provide that its judicial authorities have the authority to order:

- a) the seizure of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through the allegedly infringing activity; and
- b) the forfeiture of assets the value of which corresponds to that of the assets derived from, or obtained directly or indirectly through the infringing activity.

ARTICLE 24.4: EX OFFICIO CRIMINAL ENFORCEMENT

Each Party shall provide that, in appropriate cases, its competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences specified in paragraphs 1, 2 and 3 of Article 24.1 (Criminal Offences) for which a Party provides criminal procedures and penalties.]

Article 25 Border Measures [CA:⁴⁹]

[CA: suggest deleting 25.1]

[EU: Article 25.1 – Provision of Information from the Right Holder

Each Party shall permit its competent authorities to request a right holder to supply information that may reasonably be expected to be within the right holder's knowledge to assist the competent authorities in taking the border measures referred to in this Article. Each Party also allow a right holder to supply such information to its competent authorities.]

Article 25.2 – Scope of Border Measures

1. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which a right holder may request its competent authorities to suspend the release of, or detain goods suspected of infringing an IPR [CA: For the purposes of this Article, goods infringing an intellectual property right shall at least include goods that are subject to footnote 14 of Article 51 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.] [EU: notably in respect of:

⁴⁹ [CA (footnote 5 of ACTA): It is understood that there shall be no obligation to apply the procedures set forth in this Section to goods put on the market in another country by or with the consent of the right holder.]

- (a) trademark;
- (b) copyright;
- (c) geographical indication; and
- (d) design.]

[EU: 2. Each party may enable such procedures to be made in respect of goods which involve infringements of other intellectual property rights.]

3. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which its competent authorities may act upon their own initiative to suspend the release of, or to detain goods suspected of infringing an IPR [EU: notably in respect of those listed in paragraph 1.]

[EU: 4. For the purposes of this provision:

- (a) "Import shipments" means shipments of goods brought into the territory of the parties from a place outside that territory, excluding goods that have been cleared for home consumption;
- (b) "Export shipments" means shipments of goods which are to be taken from the territory of the parties to a place outside that territory.]

[CA: 4. Each Party may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.]

Article 25.3 – Application by the Right Holder

1. Each Party shall provide that its competent authorities require a right holder that requests the procedures described in Article 25.2 to provide adequate 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 suspect goods reasonably recognisable by the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in Article 25.2.

2. Each Party shall provide for applications to suspend the release of, or to detain goods suspected of infringing an IPR listed Article 25.2, [EU: under customs control in its territory][CA: to suggest alternate wording]. The competent authorities may provide for such applications to apply to multiple shipments. Each Party may provide that, at the request of the right holder, the application to suspend the release of, or to detain suspect goods may apply to selected points of entry and exit under customs control.

3. Each Party shall ensure that its competent authorities inform the applicant within a reasonable period whether they have accepted the application. Where its competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application.

4. A Party may provide that, where the applicant has abused the procedures described in Article 25.2, or where there is due cause, its competent authorities have the authority to deny, suspend, or void an application.

Article 25.4 – Security or Equivalent Assurance

Each Party shall provide that its competent authorities have the authority to require a right holder that

requests the procedures described in Article 25.2 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. [CA: 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, or detention of, the goods in the event the competent authorities determine that the goods are not infringing. A Party may, only in exceptional circumstances or pursuant to a judicial order, permit the defendant to obtain possession of suspect goods by posting a bond or other security.]

Article 25.5 – Determination as to Infringement

Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 25.2, whether the suspect goods infringe an intellectual property right.

1. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in Article 25.5 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.

2. 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 release of the goods into the channels of commerce.

3. Each Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in Article 25.5 that the goods are infringing.

Sub-Section 4

[EU: Article 26 Co-operation

1. The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this chapter. Areas of co-operation include, but are not limited to, the following activities:

- (a) exchange of information on the legal framework concerning intellectual property rights (including geographical indications) and relevant rules of protection and enforcement; exchange of experiences on legislative progress;
- (b) exchange of experiences on enforcement of intellectual property rights, including by customs, police, administrative and judiciary bodies;
- (c) capacity-building.

2. Without prejudice and as a complement to paragraph 1, the European Union and Canada agree to establish and maintain an effective dialogue on intellectual property issues ("*IP Dialogue*") to address topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issue.]