

CHAPTER SIXTEEN

INTELLECTUAL PROPERTY

Article 16.1: Objectives

The objectives of this Chapter are to:

- (a) facilitate international trade and economic, social and cultural development through the dissemination of ideas, technology, and creative works;
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights;
- (c) achieve a balance between the rights of intellectual property right-holders and the legitimate interests of intellectual property users with regard to intellectual property; and
- (d) strengthen the Parties' cooperation in the field of intellectual property.

Article 16.2: Scope of Intellectual Property

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

Article 16.3: Affirmation of International Agreement

The Parties affirm their rights and obligations under the TRIPS Agreement and other intellectual property agreements to which both Parties are party.

Article 16.4: Nature and Scope of Obligation

1. Each Party may provide more extensive protection for, and enforcement of, intellectual property rights under that Party's domestic law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.
2. Each Party shall be free to determine the appropriate method of implementing this Agreement within its own legal system and practice.
3. This Agreement does not create any obligation with respect to the distribution of resources between enforcement of intellectual property rights and enforcement of law in general.

Article 16.5: Public Health Concerns

1. The Parties recognise the importance of the *Declaration on the TRIPS Agreement and Public Health* (hereinafter referred to as the "Doha Declaration") adopted on 14 November 2001 by the WTO Ministerial Conference. In interpreting and implementing the rights and obligations under this Chapter, the Parties are entitled to rely on the Doha Declaration.
2. The Parties shall contribute to the implementation of, and respect, the Decision of the WTO General Council of 30 August 2003 on the Implementation of 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.

Article 16.6: National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property pursuant to Articles 3 and 5 of the TRIPS Agreement.

2. In respect of the rights of performers and producers of phonograms, a Party may satisfy the obligation in paragraph 1 by providing national treatment to the nationals of the other Party specifically granted in this Chapter in accordance with the *WIPO Performances and Phonograms Treaty*, done 20 December 1996 at Geneva (hereinafter referred to as the “WPPT”).

Article 16.7: Exhaustion

This Chapter does not affect the freedom of the Parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.

Article 16.8: Disclosure of Information

This Chapter does not require a Party to disclose information that would impede law enforcement, be contrary to that Party’s domestic law, or be exempt from disclosure under that Party’s domestic law.

Article 16.9: Trademarks

Trademarks Protection

1. A Party shall not require, as a condition of registration, that signs be visually perceptible, or deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound.¹

2. Each Party shall provide that trademarks include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in that Party’s domestic law, provided that such marks are protected.

¹ A Party may require an adequate representation, or description, of the sign.

3. Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, at least for goods or services that are identical or similar to the goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of each Party making rights available on the basis of use.

Exceptions to Trademarks Rights

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

Well-Known Trademarks

5. A Party shall not require, as a condition for determining that a mark is a well-known mark, that the mark has been registered in the territory of that Party or in another jurisdiction. Each Party shall make available remedies to the owner of a well-known trademark, whether or not such mark:

- (a) is registered;
- (b) is included on a list of well-known marks; or
- (c) has already been recognised as being well-known.

6. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) done 14 July 1967 at Stockholm (hereinafter referred to as the "Paris Convention") shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark², whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

² For the purpose of determining whether a mark is well-known, a Party shall not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

7. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion.

Registration and Applications of Trademarks

8. Each Party shall provide a system for the registration of trademarks, in which the reasons for a refusal to register a trademark are communicated in writing and may be provided electronically to the applicant. The Party shall provide to the applicant an opportunity to contest that refusal and to judicially appeal a final refusal.

9. Each Party shall introduce the possibility to oppose trademark applications.

10. Each Party shall provide, to the extent possible, a publicly available electronic information system of trademark applications and registered trademarks.

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

Article 16.10: Protection of Geographical Indications³

1. Canada shall, with respect to the geographical indications⁴ of “*GoryeoHongsam*”, “*GoryeoBaeksam*”, “*GoryeoSusam*”, and “*IcheonSsal*” and their translations, respectively, “Korean Red Ginseng”, “Korean White Ginseng”, “Korean Fresh Ginseng” and “Icheon Rice”, provide the legal means⁵ for interested parties to prevent:

- (a) 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 that misleads the public as to the geographical origin of the good;
- (b) the use of any of these geographical indications for ginseng or rice, as the case may be, that does not originate in the place indicated by the geographical indication in question, even where the true origin of the relevant good is indicated or the geographical indication is used in translation or transcription or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like; and
- (c) any other use that constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

³ Geographical indications are, for the purposes of this Article, indications which identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

⁴ For greater certainty, an individual component of a multi-component term that is protected as a geographical indication in a Party under this Article shall not be protected in that Party where the individual component is a term customary in the common language as the common name for the associated goods.

⁵ “Legal means” includes recognition of these terms without additional action required by the geographical indication right-holder and the provision of remedies consistent with Articles 16.13.1 through 16.13.4, 16.13.6, and 16.13.7. Parties shall discuss enforcement issues such as civil or border measures, etc. under the Committee established pursuant to Article 16.18. The Parties may apply opposition and cancellation procedures to the protection provided for in paragraphs 1 and 2.

2. Korea shall, with respect to the geographical indications of “Canadian Whisky” and “Canadian Rye Whisky”, provide the legal means for interested parties to prevent:

- (a) 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 that misleads the public as to the geographical origin of the good;
- (b) the use of any of these geographical indications for a spirit that does not originate in the place indicated by the geographical indication in question, even where the true origin of the spirit is indicated or the geographical indication is used in translation or transcription or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like; and
- (c) any other use that constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

3. If a trademark has been applied for or registered in good faith, or if rights to a trademark have been acquired through use in good faith, in the territory of a Party before the entry into force of this Agreement, measures adopted to implement this Article in that Party shall not prejudice the eligibility for or the validity of the registration of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to, a geographical indication.

4. A Party is not obligated under this Article to protect geographical indications that are not, or cease to be protected in their place of origin, or that have fallen into disuse in that place.

5. A Party may provide that any request made under this Article 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.

Article 16.11: Copyright and Related Rights

Protection Granted

1. Each Party shall comply with:
 - (a) the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, done at Rome on 26 October 1961 (hereinafter referred to as the “Rome Convention”);
 - (b) the *Berne Convention for the Protection of Literary and Artistic Works (1971)*, done at Paris on 24 July 1971 (hereinafter referred to as the “Berne Convention”);
 - (c) the *WIPO Copyright Treaty*, done at Geneva on 20 December 1996 (hereinafter referred to as the “WCT”); and
 - (d) the WPPT.

Rights of Copyright Holder

2. Each Party shall provide⁶ that authors, performers, and producers of phonograms have the right to authorise or prohibit all reproductions of their works and other subject matters including performances⁷ and phonograms in any manner or form.^{8,9}

Right to Remuneration for Broadcasting and Communication to the Public

3. Each Party shall provide to performers and producers of phonograms the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.¹⁰

⁶ The Parties reaffirm that it is a matter for each Party’s law to prescribe that works in general or any specified categories of works, performances and phonograms shall not be protected by copyright or related rights unless they have been fixed in some material form.

⁷ For the purposes of this Chapter, a “performance” means a performance fixed in a phonogram unless otherwise specified.

⁸ The agreed statements in the WCT and WPPT that are applicable to the rights of reproduction provided by the agreements and treaties listed in paragraph 1 apply as well to this paragraph, including any agreed statements concerning limitations and exceptions.

⁹ A Party may determine limitations and exceptions with regard to temporary reproductions under that Party’s domestic law.

¹⁰ A Party may satisfy the obligation in this paragraph by implementing such a right in accordance with the WPPT.

Protection of Technological Measures

4. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures¹¹ that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorised by the authors, performers or producers of phonograms concerned or permitted by law.

5. In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 4, each Party shall provide protection against at least:

- (a) to the extent provided by its law:
 - (i) the unauthorised 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.

¹¹ 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, performances, or phonograms, which are not authorised by authors, performers or producers of phonograms, as provided for by a Party’s domestic law. Without prejudice to the scope of copyright or related rights contained in a Party’s domestic law, technological measures are deemed effective where the use of protected works, performances, or phonograms is controlled by authors, performers 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.

6. In implementing paragraphs 4 and 5, a Party is not 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 a particular technological measure, so long as the product does not otherwise contravene that Party's measures implementing these paragraphs. This Agreement does not require a Party to mandate interoperability in that Party's law, *i.e.*, there is no obligation for the Information Communication Technology industry to design devices, products, components, or services to correspond to certain technological protection measures.

7. In providing adequate legal protection and effective legal remedies pursuant to paragraph 4, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraphs 4 and 5. The obligations set forth in paragraphs 4 and 5 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's domestic law.

Protection of Rights Management Information

8. To protect electronic rights management information¹², each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or 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;

¹² For the purposes of this Article, "rights management information" means:

- (a) information that identifies the work, the performance, or the phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;
- (b) information about the terms and conditions of use of the work, performance, 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, performance, or phonogram, or appears in connection with the communication or making available of a work, performance, or phonogram to the public.

- (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or phonograms, knowing that electronic rights management information has been removed or altered without authority.

9. In providing adequate legal protection and effective legal remedies pursuant to paragraph 8, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing paragraph 8. The obligations set forth in paragraph 8 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.

Protection of Encrypted Program-Carrying Satellite Signals

10. Each Party shall make it a criminal or civil offense:

- (a) to manufacture, import, sell, lease, or otherwise make available a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorisation of the lawful distributor of such signal; and
- (b) to receive, in connection with commercial activities, or further distribute, an encrypted program-carrying satellite signal that has been decoded without the authorisation of the lawful distributor of the signal.

Each Party shall provide that any civil offense established under subparagraph (a) or (b) is actionable by any person that holds an interest in the content of the signal.

Article 16.12: Patents

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application¹³. In addition, each Party confirms that patents shall be available for any new uses or methods of using a known product, provided that the invention is new, involves an inventive step, and is capable of industrial application.

¹³ For the purposes of this Article, a Party may treat the term "inventive step" as synonymous with "non-obvious" and the term "capable of industrial application" as synonymous with "useful."

Exclusion from Patentability

2. Each Party may exclude from patentability:
 - (a) inventions, the prevention within that Party's territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by that Party's domestic law;
 - (b) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and
 - (c) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, each Party shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.

Limited Exceptions to Patent Rights

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that those exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 16.13: Enforcement of Intellectual Property Rights

General Obligations

1. Each Party shall provide that enforcement procedures are available under that Party's domestic law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in a manner so as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Each Party shall provide that the procedures adopted, maintained, or applied to implement this Chapter are fair and equitable, and provide for the rights of all participants subject to such procedures to be appropriately protected. Each Party shall also provide that these procedures are not unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. In implementing this Chapter, 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.

4. This Chapter is not to be construed to require a Party to make its officials subject to liability for acts undertaken in the performance of their official duties.

Presumption of Authorship or Ownership

5. In civil proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated as the author, performer, or producer of the work, performance, or phonogram in the usual manner is the designated right holder in such work, performance, or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related rights subsist in such subject matter.

*Civil and Administrative Procedures and Remedies*¹⁴

6. Each Party shall make available to right holders¹⁵ civil judicial procedures concerning the enforcement of any intellectual property right.

7. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that those procedures conform to principles equivalent in substance to those set forth in this Article.

¹⁴ A Party may exclude protection of undisclosed information from the scope of this Article.

¹⁵ For the purposes of this Article, “right holder” includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.

Injunctions

8. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, that Party's judicial authorities have the authority to issue an order against a person to desist from an infringement, *inter alia*, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce.

9. Notwithstanding the other provisions of this Article, a Party may limit the remedies available against use by governments or by third parties authorised by a government, without the authorisation of the right holder, to the payment of remuneration, provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing that use. In other cases, the remedies under this Article shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments and adequate compensation shall be available.

Damages^{16, 17}

10. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, that Party's judicial authorities have the authority to order the infringer who, knowingly or with reasonable grounds to know, engaged in infringing activity to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement¹⁸. In determining the amount of damages for infringement of intellectual property rights, a Party shall provide that its judicial authorities have the authority to consider, *inter alia*, any legitimate measure of value the right holder submits, which may include lost profits or the value of the infringed goods or services measured by the market price or the suggested retail price.

¹⁶ For greater certainty, a Party may exclude from the application of this Article cases of copyright or related rights infringement where an infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

¹⁷ For greater certainty, a Party is not obliged to provide for the possibility of the remedies in paragraphs 10 through 12 to be ordered in parallel.

¹⁸ A Party may also provide that the right holder is not be entitled to any of the remedies set out in paragraphs 10 through 14 in the case of a finding of non-use of a trademark.

11. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, that Party's judicial authorities have the authority to order the infringer to pay the right holder the infringer's profits that are attributable to the infringement. A Party may presume those profits to be the amount of damages referred to in paragraph 10.

12. At least with respect to infringement of copyright or related rights protecting works, phonograms, and performances, and in cases of trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:

- (a) pre-established damages;
- (b) presumptions¹⁹ for determining the amount of damages sufficient to compensate the right holder for the harm caused by the infringement; or
- (c) at least for copyright, additional damages.

13. If a Party provides the remedy referred to in paragraph 12(a) or the presumptions referred to in paragraph 12(b), that Party shall ensure that either its judicial authorities or the right holder has the right to choose such a remedy or presumptions as an alternative to the remedies referred to in paragraphs 10 and 11.

14. Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, trademarks, and patents, that the prevailing party be awarded payment by the losing party of court costs or fees, appropriate lawyer's fees, or other expenses as provided for under that Party's domestic law.

¹⁹ The presumptions referred to in this subparagraph may include a presumption that the amount of damages is:

- (a) the quantity of the goods infringing the right holder's intellectual property right in question and actually assigned to third persons, multiplied by the amount of profit per unit of goods which would have been sold by the right holder if there had not been the act of infringement;
- (b) a reasonable royalty; or
- (c) 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.

Other Remedies

15. At least with respect to pirated copyright goods and counterfeit trademark goods, each Party shall provide that, in civil judicial proceedings, at the right holder's request, that Party's judicial authorities have the authority to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort.

16. Each Party shall further provide that, in civil judicial proceedings, its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of such infringing goods, be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in a manner so as to minimise the risks of further infringements.

17. A Party may provide for the remedies described in paragraphs 15 and 16 to be carried out at the infringer's expense.

Information related to Infringement

18. Without prejudice to each Party's domestic 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, that Party's judicial authorities have the authority, in accordance with that Party's domestic law, to order the infringer or, in the alternative, the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in that Party's applicable domestic law that the infringer or alleged infringer possesses or controls. This information may include information regarding a 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.

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

Provisional Measures

20. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures:

- (a) against a party or, if appropriate, a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of any intellectual property right from occurring, and in particular, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce; and
- (b) to preserve relevant evidence in regard to the alleged infringement.

21. Each Party shall provide that its judicial authorities have the authority to adopt provisional measures *inaudita altera parte* if 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. In proceedings conducted *inaudita altera parte*, each Party shall provide that Party's judicial authorities with the authority to act expeditiously on requests for provisional measures and to make a decision without undue delay.

22. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, that Party's judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, and of materials and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence, either originals or copies thereof, relevant to the infringement.

23. Each Party shall provide that its authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to procedures for such provisional measures.

24. Each Party may provide that if the provisional measures are revoked, if they lapse due to any act or omission by the applicant, or if it is subsequently found that there has been no infringement of an intellectual property right, the judicial authorities have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

Article 16.14: Special Requirements Related to Border Measures

Scope of Border Measures

1. For the purposes of this Article, goods infringing an intellectual property right include goods that are subject to footnote 14 of Article 51 of the TRIPS Agreement.
2. The provisions in this Article may apply to in-transit²⁰ shipments or goods.
3. A Party may apply the provisions set forth in this Article to goods put on the market in another country by or with the consent of the right holder.

Provision of Information from the Right Holder

4. Each Party shall permit that Party's competent authorities to request that a right holder supply relevant information to assist the competent authorities in taking the border measures referred to in this Article. A Party may also allow a right holder to supply relevant information to that Party's competent authorities.

Ex Officio Action

5. Each Party shall adopt or maintain procedures with respect to import and export shipments under which that Party's competent authorities may action upon their own initiative to suspend the release of, or to detain, goods suspected of infringing an intellectual property right.

²⁰ "In-transit" means the movement of shipments or goods under customs procedures under which shipments or goods are:

- (a) transported under customs control from one customs office to another; or
- (b) transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation.

Application by the Right Holder

6. Each Party shall adopt or maintain procedures with respect to import and export shipments under which a right holder may request the competent authorities of the Party providing the procedures to suspend the release of, or to detain, goods suspected of infringing an intellectual property right.

7. Each Party may provide that, if the applicant has abused the procedures described in this Article or if there is due cause, that Party's competent authorities have the authority to deny, suspend, or void the application.

Security or Equivalent Assurance

8. Each Party shall provide that its competent authorities have the authority to require a right holder that requests the procedures provided for in paragraph 6 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 this security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of, or detention of, the goods in the event the competent authorities determine that the goods are not infringing.

Determination as to Infringement

9. Each Party shall adopt or maintain procedures by which that Party's competent authorities may determine, within a reasonable period after the initiation of the procedures described in paragraphs 5, 6, and 7, if the goods suspected of infringing an intellectual property right infringe an intellectual property right.

Remedies

10. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in paragraph 9 that the goods are infringing. In cases where those goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in a manner so as to avoid harm to the right holder.

11. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

12. A Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in paragraph 9 that the goods are infringing.

Fees

13. Each Party shall provide that an application fee, storage fee, or destruction fee to be assessed by that Party's competent authorities in connection with the procedures described in this Article not be used to unreasonably deter recourse to these procedures.

Disclosure of Information

14. Each Party may, without prejudice to that Party's law pertaining to the privacy or the confidentiality of information, authorise that Party's competent authorities, where they have detained, or seized, goods suspected of infringing an intellectual property right, to provide a right holder who has filed a request for assistance with information about goods that could assist them in pursuing a remedy. This information may include the description and quantity of the goods, the name and address of the consignor, importer, exporter or consignee, and, if known, the country of origin of the goods and the name and address of the manufacturer of the goods.

Small Consignment and Personal Luggage

15. Each Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

Article 16.15: Criminal Procedures and Remedies

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

2. Each Party shall provide for criminal procedures and penalties to be applied in accordance with that Party's laws and regulations for the unauthorised copying of a cinematographic work, or any part thereof, from a performance in a movie theatre.

Penalties

3. For offences specified in paragraphs 1 and 2, each Party shall provide penalties that include imprisonment as well as monetary fines²¹ sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.

Seizure, Forfeiture, and Destruction

4. With respect to the offences specified in paragraphs 1 and 2 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, 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.

5. If a Party requires the identification of items subject to seizure as a prerequisite for issuing an order referred to in paragraph 4, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.

6. With respect to the offences specified in paragraphs 1 and 2 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, those goods are disposed of outside the channels of commerce in a manner so as to avoid causing harm to the right holder. Each Party shall provide that the forfeiture or destruction of those goods occur without compensation of any sort to the infringer.

²¹ For greater certainty, there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

7. With respect to the offences specified in paragraphs 1 and 2 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 provide that the forfeiture or destruction of such materials, implements, or assets shall occur without compensation of any sort to the infringer.

8. With respect to the offences specified in paragraphs 1 and 2 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.

Ex Officio Criminal Enforcement

9. Each Party shall provide that, in appropriate cases, that Party's competent authorities may act upon their own initiative to initiate investigation or legal action with respect to the criminal offences specified in paragraphs 1 and 2 for which that Party provides criminal procedures and penalties.

Article 16.16: Special Measures against Copyright Infringers on the Internet

1. Each Party's civil and criminal enforcement procedures to the extent set forth in this Chapter 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.

2. A Party may provide, in accordance with that Party's domestic law, that Party's 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, if that right holder has filed a legally sufficient claim for copyright or related rights infringement, and if that information is being sought for the purpose of protecting or enforcing those rights.

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

4. Each Party shall provide measures to curtail copyright and related right infringement on the Internet or other digital network.

5. Each Party shall implement these procedures in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce and, consistent with that Party's domestic law, preserves fundamental principles such as freedom of expression, fair process, and privacy.²²

Article 16.17: Cooperation

1. To further the objectives in Article 16.1, the Parties agree to increase opportunities for cooperation in the field of intellectual property. Areas of cooperation may include:

- (a) patents, trade secrets, industrial design and related rights;
- (b) trademarks and related rights, including geographical indications;
- (c) copyright and related rights;
- (d) intellectual property management, registration and exploitation;
- (e) intellectual property protection in the digital environment to facilitate the growth and development of e-commerce;
- (f) intellectual property education and awareness programmes;
- (g) issues related to non-parties, particularly with respect to shared mutual concerns such as anti-counterfeiting and piracy;

²² 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 holder.

- (h) issues related to the implementation of paragraph 6 of the Doha Declaration;
 - (i) intellectual property and development; and
 - (j) other issues of mutual interest concerning intellectual property.
2. This cooperation may include:
- (a) promoting the development of contacts among the Parties' respective agencies which have an interest in the field of intellectual property;
 - (b) exchanging information on:
 - (i) each Party's policies, legislative provisions, activities, and experiences in the field of intellectual property;
 - (ii) the implementation of intellectual property systems aimed at promoting the efficient registration of intellectual property rights; and
 - (iii) appropriate initiatives to promote public awareness of intellectual property rights;
 - (c) providing to the other Party, and updating as required, contact points for the authorities responsible for the enforcement of laws and regulations relevant to counterfeit and pirated goods;
 - (d) exchanging experts to contribute to a better understanding of each Party's intellectual property policies and experiences;
 - (e) policy dialogue on intellectual property in non-parties and intellectual property initiatives in multilateral and regional forums;
 - (f) facilitating exchanges among relevant academic and research institutions; and
 - (g) those other activities as may be jointly determined by the Parties.

Article 16.18: Committee on Intellectual Property

1. The Parties hereby establish a Committee on Intellectual Property composed of representatives of each Party with expertise in intellectual property.
2. The Committee shall be co-chaired by a representative of each Party.
3. The Committee shall:
 - (a) discuss topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issues;
 - (b) provide a forum for consultations pursuant to Article 16.19; and
 - (c) oversee the Parties' cooperation under this Chapter.
4. The Committee shall meet annually or as otherwise agreed.

Article 16.19: Consultations

1. Either Party may request consultations with the other Party regarding any actual or proposed measure or any other matter which that Party considers might negatively affect its intellectual property interests.
2. Upon a request pursuant to paragraph 1, the Parties agree to consult within the framework of the Committee to consider ways of reaching mutually satisfactory solutions. In doing so, the Parties shall:
 - (a) endeavour to provide sufficient information to enable a full examination of the matter; and
 - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information.
3. If the Parties are unable to reach a mutually satisfactory solution pursuant to consultations under paragraph 2, either Party may refer the matter to the Commission.